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ABSTRACT

The experience of the child victim as a courtroom witness in sexual abuse cases is examined in this study of a testing program involving 30 children aged 6 to 15. The purpose of the study was to identify needs not recognized by courts that can be responded to, denied, or exacerbated through language. Based on court transcripts, differences were studied between the language repertoire of the child and that demanded by the courtroom. Court-related language features are identified and discussed: use of negative; juxtaposition; nominalization; multifaceted questions; unclear or confused expressions; specific and difficult vocabulary; unclear anaphora; use of police statements; quoting of the child's words; quoting of other people's words; repetition of previous response; time, space and location questions; and embeddings. Results of the testing program indicate that certain types of questions posed problems for the child trying to hear language. It is suggested that court appearance is not necessarily traumatizing for a child, but becomes so when a child cannot feel sure that he or she is heard, understood, and believed. Suggestions for improved questioning are offered. An annotated bibliography is included that contains 66 references. (LB)

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STRANGE LANGUAGE

CHILD VICTIMS UNDER CROSS EXAMINATION

·MARK BRENNAN · ROSLIN E. BRENNAN·

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STRANGE LANGUAGE

— child victims under cross examination

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3rd Edition

Mark Brennan **Roslin E. Brennan**

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Throughout this publication there appear extracts from transcripts of court proceedings. Many of them contain names of people and places. All of these are changes from the originals.

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FOREWORD

Over the past twenty years as a social worker I have seen many situations where a child has been required to attend court. The process differs slightly depending on the jurisdiction but courts and their processes are poorly designed to enable children to participate with minimal stress in a way which maximises the value of what they have to say. This has always seemed to me a great pity because children from a young age do have valid and useful information to contribute. Indeed they have a right to do so especially where their own lives are being affected by the behaviour of another person.

I do not see court appearance as necessarily traumatizing for a child. The experience only becomes traumatic when a child cannot feel sure she/he has been heard and understood and believed. On the contrary I have seen that for some children court can be part of their healing. It can begin to restore their trust in the social institutions that may have deceived them; it can enable them to see that a persecutor they have seen as all powerful is in fact not so powerful. It can enhance their self esteem to look back and see their own courage and capacity to communicate with such an authoritative audience.

But, for a child's appearance to be of use to the court or her/himself, the court system and processes must enable the truth to be elicited and maintained.

Many factors contribute to or diminish the value of a child's evidence: the way the court atmosphere impinges; the criteria used to determine a child's capacity to give evidence; the quality of prosecuting and defence lawyers; the judiciary's style of controlling the court; the support present for the child; and the time taken to actually get the matter into court.

To understand the relative effects and details of all these factors requires much further research. But from my experience the following facts are absolutely clear and require no more research. In any court where a child is a witness there is not room for verbal or behavioural dramatics, intentional linguistic confusions or other forms of intimidation. Clear, unambigious questions, time to answer, opportunity for clarification and a real awareness of children's capacitities to respond can only help facilitate the truth.

With all the concern that has been expressed about children as witnesses the irony is that children have the potential to be ideal witnesses. The laterality of their thinking, the descriptive rather than interpretive nature of their responses and their respect for the authority of the court should be valued.

Children will be truthful if it is safe for them to be so. They need to know that the truth will not make their lives worse. Sadly, too frequently adults in the judicial and welfare system let children down. Some tell the truth only to be returned to the control of an abusing parent. Others find themselves rejected by their whole family. And frequently the truthful child is institutionalised while the offender gets a bond, if anything at all.

The innocent adult has nothing to fear from any change to the system which makes it more accepting of clear, descriptive, truthful evidence. The guilty adult can only gain, as truth can be the end of dishonest, destructive and exploitive activities and the beginnings of a new responsibility.

This study, "Strange Language", is exciting in that it explores a particular aspect of the child in court. Its insights can be readily utilized to make the court process more legitimate. Such a positive move will hopefully encourage support for further detailed research. There is so much more that needs to happen to make our courts work in the interests of all concerned.

Faye Knight.

"I don't think it makes no differents where you start the telling of a thing. You never know where you begun realy. No moren you know where you begun your oan self. You myt know the place and day and time of day when you ben beartht. You myt even know the place and day and time when you ben got. That dont mean nothing tho. You stil dont know where you begun".

(From "Riddley Walker" by Russel Hoban, 1980.)

1 BEGINNINGS

"When we try to pick out anything by itself, we find it hitched to everything else in the universe" (John Muir) is a discerning comment on natural ecology. It is an equally powerful view of human relationships and of research. "Strange Language" is a distillation of concerns, accounts and connections about the treatment of sexually abused children in court as they are examined and cross examined. It might have been tempting to restrict our study to a review only of words and how they are put together. This however, does not reflect our view of language use or its analysis. Rather, to make sense of what is said between people we have to regard what is meant and what effect any string of words might have. This becomes the beginning of our appreciation of the language.

It is a view of language which makes us test constantly our own insights and makes us just as constantly take into account other participants and contexts. The questions thus developed are never final or complete but are illuminating and useful.

Twenty six transcripts from committal hearings, District Court proceedings and Supreme Court appeals and over five thousand questions asked and responded to form one set of data. Fifteen interviews with medical, legal and counselling personnel form another. A library of some seventy books, articles and reports has become our literature. And attending court, taking field notes and talking with child victim witnesses have kept us well focussed.

A review of the above led us to specially construct a testing programme involving thirty children between the ages of six and fifteen, responding to some fifteen hundred questions. The interest and critical commentary of friends and colleagues is often hard to take but is absolutely necessary and totally appreciated. All the above we think have kept us in touch with our data and have constantly reorganised our presentation.

The aim of the study is to display some of the details and connections behind a concern held by workers in the field. That concern is well founded in experience but is often only vaguely apprehended, and is thus difficult to react to critically. Victims of sexual abuse who are also children have needs not recognised by our courts and some of these needs can be responded to, denied or exacerbated through language.

There are two kinds of results we expect for readers of "Strange Language". One is that it will sensitize those already immersed in the language of court, to both the meanings and the effects created by their words. The other is to equip those who work in and around courts, and who do hear the strangeness but who don't know how it is generated, with a set of tools. They now have an array of descriptors and indicators to clarify their unease. It should also help their critique. The overall aspiration for the study is that it will enable children to have their language, and other efforts at communicating meaning, listened to in full.

Our efforts to have this happen have been dependent on a number of people for a variety of reasons.

Faye Knight pinpointed the problem of unequal language treatment when she attended court as a support counsellor with eight children. This study is hopefully some small celebration of her particular spirit and commitment. The Criminology Research Council provided the funding which allowed the work to proceed almost immediately. Megan Latham, John Birch, Graham Henson and Peter Berman became significant channel markers without which we could not have navigated the shoals and reefs of the New South Wales Attorney General's Department.

At Riverina-Murray Institute of Higher Education Jan Horsfall, Dennis Warren, Elizabeth Lohmeyer, Philip Thomas and members of the Riverina Literacy Centre maintained a critical interest in the study and passed on information.

Yon Maley of Macquarie University, Glen Barton and Barry Winkler of the Wagga Police, Brian Cambourne of the Centre for the Study of Literacy at Wollongong University, Morag Budiselik, a community health worker in Wagga and magistrate Ross Sterland each made important contributions at significant times. For their active support and encouragement the study is indebted to Kathy Sharpe and Jenny Campbell, child protection officers, John Taylor, police prosecutor, Joe Moloney and Gerald Hewitt, paediatricians and the Riverina Children at Risk Committee. Through that Committee Sister Maureen, Michael Jones and the children of three Wagga Catholic Schools were brought into the testing programme which became a watershed for concepts and information in the study.

Margaret Tokley, Lea Salmon, Maureen Thorney-croft and Hampden Bridge Day Care Centre looked after young Eliot in such a way that we knew we weren't being neglectful parents. Andrew Wallace kept the computer and its operator properly programmed and Robert Seaman and Jane Edmanson kept the accounts straight.

Claire Kincaid designed the cover and graphs and Ann-Maree Carroll and Michael Logan prepared the manuscript. As on many other occasions over the years Laurel Schulz typed a good deal of difficult material.

There are some other tens of individuals who talked to us and let us talk to them. Contact with each one has shaped this presentation. The most significant of these were the children who thought that by their participation they could help save other children some of the extra hurt and injury actuated by their court appearances.

The mentioning of any person or organisation does not assume their endorsement of the study but does recognise their significant contribution. We now invite your contribution to the transaction by reading "Strange Language".

Mark Brennan,
Roslin E. Brennan.
Coolamon.
January, 1988.

"He rooted me"
"Well can you tell me how that came to pass?"
(N.S.W. Committal Hearing, 1985)

2 SHOOTING RATS IN A BARREL

In March 1986 the law in New South Wales regarding the testimony of children under the age of 10 who are victims of sexual abuse, was changed. The evidence of young children can now be heard in adult, open court. The evidence from workers in the field, police, youth and community services officers, community health workers and doctors, is that because of the rigours of the adversarial, adult court procedures, those reponsible are reluctant to prosecute offenders whose victims are either young, unconfident, slow or passive. However, these are precisely some of the characteristics which either suggest them as victims in the first place or are the results of continuous victimization. These views are echoed by the magistrate who stated that cross examining children in court is "...like shooting rats in a barrel.... it's easy to confuse them and make out they're telling lies".

This report is about such victims; children who have been sexually abused, and who having told someone of their experiences find themselves the subject of disbelieving, aggressive and confusing cross examination. There are several vital aspects which justify our interest in the cross examination of children who have been sexually abused. Cross examination is a special kind of questioning which is geared tactically to upset the credibility of a witness. The witnesses here are victims, a psychological status which carries with it its own frailities and propensities. With these aspects in mind a question is not a mere question but a tactical tool deployed on the battelground of credibility; a battlegound where the option for negotiation is wrested from the child victim witness.

We have many queries about the experiences of such child victims during cross examination, and because the context of court is primarily the context of words and what they represent, then it is legitimate and useful to view those queries in terms of language; in terms of its uses and effects. Some of the issues for inquiry are: Some children have told their "stories" 22 times to police, teachers, counsellors and doctors. What are the effects of multiple recounting? What do children remember of traumatic happenings and how do they recount such? What are the effects of multiple and continuous abuse and how is this reported by children? What account do courts take of age? Is aggressive cross examination a legitimate tool to test truth? What are the effects of continuous questioning? What means are currently available for allowing children to tell their story? How can children's stories be validated?

These are issues which are brought into focus when we examine how children respond to questioning in court. We are supported here by some of the concluding statements in the New South Wales Bureau of Crime Statistics and Research publication, "Child Sexual Assault-The Court Response", (Cashmore and Horsky, 1987).

"Since criminal prosecution of child sexual assault offenders is likely to continue, at least for some cases, there is an urgent need to minimise the negative consequences of children's involvement in such proceedings. Although special Children's Courts were established some time ago in most jurisdictions in recognition of the special needs and vulnerabilities of juvenile offenders and "children in need of care", so far there has been little special provision for accommodating the needs of children who appear in often traumatic circumstances as witnesses in the "adult" criminal justice sytem. Children who are required to appear in criminal court, to give evidence and face cross examination encounter a number of difficulties in dealing with a system that does not take into account that, as children, they are even more vulnerable than an adult witness giving evidence about a traumatic event in their lives. The major difficulties faced by any witness include the requirement that they repeat the story of what happened to a variety of people during the investigation and in court hearings, the delays between the various stages of investigation and prosecution, and the intimidating nature of the physical environment of the court and of court procedures. Child witnesses experience all these difficulties, but more acutely, since they may not be (depending on age) at a stage of their development

which would enable them to fully understand the court experience and place it in a meaningful context". (Cashmore and Horsky, 1987).

Regardless of the measures that might eventually be chosen to meet some of these concerns, a sympathetic understanding of the sensitivities and capacities of the children remains mandatory. This publication hopes to help develop some of that understanding through a study and presentation of some of the aspects of language as it is used in court and as it affects child victim witnesses.

It should be noted that in that same report referred to above it was also stated that "Unfortunately, the present study did not include a detailed examination of the line of questioning used in cross examination and Bonney's (1986) study did not differentiate between child and adult complainants in this respect" (Cashmore and Horsky, 1987).

The July 1987 Consultation Paper issued by the New South Wales Government Violence Against Women and Children Task Force notes that, "The requirements for giving sworn evidence were altered so that a child under 12 can give evidence as if on oath once she/he has satisfied the court that she/he is intelligent enough to give evidence and that she/he understands the duty to tell the truth in court". However, in a successive paragraph it states, "Although the child sexual assault reforms introduced in 1985 have significantly reduced the trauma of child victims giving evidence in court, the Child Protection Council continues to hear from concerned professionals who witness the inadequacies of our criminal justice system when dealing with child complainants. The difficulty of obtaining clear evidence from very young children who do not have the verbal skills to explain what has happened to them remains a significant problem which can often lead to a decision not to prosecute. The number of times a child is required to retell the story of the assault is usually against a child's best interests".

The despondency of this statement assumes (the reality) that such children's statements necessarily have to be subjected to the credibility attacking techniques of cross examination. There are children who do have the verbal skills, who do have clear, sustainable and substantial stories to tell but whose sense of self and command of language is not able to negotiate the rigours of cross examination. The extant procedures are not ones which focus on the establishment of truth but rather on the assertion of power.....the power to confuse.

This report does not assume either as a beginning or finishing point that children should not be confronted, or indeed that they should not be given the opportunity to confront their attackers, real or imagined. We also don't assume that simple language is good or that retelling stories over and over again is necessarily bad. It is in the nature of trauma to want to do this. Or that all recounts will be of equal quality for whatever purpose. Submitting children to complex adult language is not an issue either. Indeed, this is how children learn and develop language. However, it is an issue when their mostly unelaborated responses to complicated and lengthy questioning are regarded as evidence. In that context they are barred from negotiating their way through the forms, vocabulary and idiosyncratic expressions. Just answer 'Yes' or 'No' is the classic expression of this.

The concept of negotiability is central to this report as we endeavour to display how the language of one person can be used to deny another the usefulness of their only admissible tool of expression, their own language. A longer term outcome of this report then is to seek ways to admit as evidence what children have to say and to allow them to negotiate meanings, ideas and experiences in ways and forms that tell clearly the stories they have to tell.

The July 1987 Consultation Paper states: "Research in the USA and the UK indicates that fear of testifying in front of the defendant is frequently mentioned as one of the most traumatic aspects of the criminal justice system for children. When the witness is a child, the accused person's right of confrontation and mere presence in court may allow an unintentional but convenient method for intimidating the witness which may result in serious, damaging effects on the child's evidence. For adult witnesses, particularly victims, the experience of facing the defendant in court can be frightening but to a child, the anticipation and experience of being in close proximity to the defendant can be overwhelming".

Whilst accepting that this is the case the writers note that this physical proximity is heightened by the overall context of an attack on the child's credibility. Often there is no support for the child at the time of cross examination.

One of the premises of the recent "No Excuses-Never Ever" campaign promoted by the New South Wales Child Protection Council, is that children who do disclose, who ask an adult for help and protection will be believed. What happens in fact, is that they soon become the victims of an adult combat. They call down on themselves the role and responsibility of being an accuser.

The Task Force paper continues:

"Children are not adults in miniature and they are not usually expected to understand or behave as adults in most aspects of their lives. When children become victims or witnesses of violence or sexual assault, however, they are generally expected to perform on a par with adults in a legal system desinged by adults for adult participants". The gap between adult and child is indeed great, but this distance is extended by the child's status as a victim and accuser.

Why Sexual Abuse?

Surely everyone who has had to attend court experiences both disquiet and discomfort.... besides, court is supposed to be solemn and special isn't it? Just because a child claims to have been raped or molested isn't a good enough reason to disallow the defendant his rights to rigourously cross examine, is it? The barrister for the defence is representing the defendant, and the child is just another witness, isn't she? Our response to all these propositions will pivot around our view of the last one.

Indeed the impetus for this study comes from a conviction that the child victim is not "just another witness", and that a special response from the court would be appropriate. Children who have been sexually abused carry a burden of responsibility by keeping secret the abuse. They often will blame themselves for any discord which occurs. Having been forced into a quasi adult role they will assume the further requirements of adult responses. Loneliness, confusion and guilt define the condition. Aggression, passivity and anger are often its expression.

It is not surprising then that, "It is generally agreed by child psychiatrists that the degree of psychic trauma is as much or perhaps more dependent on the way the child victim is treated after discovery than at the time of the offence itself. The need to protect child victims from damage to their future personality by the reactions of parents and by police interrogations and legal proceedings in which they are involved has caused great concern among leading authorities on questions related to law and psychiatry in the United States, England, France, Germany, Austria, Switzerland and the Scandanavian countries". (Libai in Schultz, 1980).

Sexually abused children most often perceive themselves as being the cause of sexual assault. They are often persuaded to give evidence with the promise that they would not be causing more trouble. In some cases an unsupportive mother will bring pressure to bear on the child to retract her disclosure which itself is more often than not a request for protection, rather than an accusation in the adult sense. It is understandable, given these indicators, that child victims in addition to their assuming responsiblity for the upheaval of everything around them, fear not being believed. This study is about accommodating some of these insights when the courts become involved and in this particular respect we have to note".....the harm observed from incestuous encounters correlates not so much with the forcefulness of the perversity of the encounter as with the climate of environmental response". (Summit and Kryso, 1978)

The extent and quality of what happens to the child in court is a significant part of that 'environmental response', and as such must be considered by anyone involved in society's response to the sexually abused child.

Why Cross Examination?

It is too easy, and unconvincing, to cast any party to a conflict into the role of evil-doer. It is not our intention to have children regarded, because they are children, as occupying a supralegal status residing far from the clutches of cross examination. Neither is it our intention to condemn only the cross examiner for an assault on the presumed innocence of the child. However, cross examination does represent a distillation of tactics and styles used throughout criminal court proceedings and it is the words and actions of the cross examiner which most obviously attack the credibility of the child victim. Prosecutors, magistrates and judges, however, also use language which does not admit the world of the child and does not allow or enable the child to present her evidence in the most convincing way.

During cross examination the capacity of language is most often used, not for assessing or displaying the veracity of a proposition, but for calling into question the credibility of the child victim witness. Cross examination is that part of court proceedings where the interests and rights of the child are most likely to be ignored and sacrificed. Evidence is displayed to discredit the witness and thus bolster the case for the defendant. The techniques used are all created with words, since they are the only currency of the court, and the extent to which the child's language abilities can be expected to match those of the cross examiner's, are the subject of this study. The extent to which truth is prejudiced by the use of these language tactics is a question to which the legal profession must address itself.

Why Language?

Why language as a focus of concern? What can analysis tell us? What can dissection display? Aren't words just artifacts, part of the identity baggage we carry with us like clothes; superficial and fashionable? Aren't words just labels for other (more important and fundamental) expressions of power and relationship? All these questions need answers before this study can even assume to have significance, because the assertions of this study are necessarily tied to beliefs about such questions and their answers.

The first principle that requires to be understood is that words, put together in whatever particular and special way, can only really be understood, and analysed in terms of their context. Context is made up of all those things which impinge upon and define what words are used, and how they are put together. And what purposes they serve as well as what function they satisfy. Words, as well as purporting to mean something in their own right, are primarily defined by situation, history, role, intent. So analysing language and its impact in terms of words alone is to deny the basis of their existence.

Any analysis of language which suggests that it can throw light on why and how we do what we do when we talk to each other (or write or read or listen) by only dissecting words or phrases, is certainly lacking. The line in a play that reads "I'm really going to enjoy this" but fails to note that the speaker has a dagger in her upraised hand, is not a record worthy of analysis in the sense that it will not show what is going on between the actors. Also an account of court proceedings which denotes "the witness" without noting that she is 9 years old, female, the likely subject of constant sexual assault by her father over a period of 5 years, who is fearful of being sent away from her mother, who has been interviewed as least six but possiby 22 times, who is regarded as 'trouble', and much more, is also a recording which fails to tell a fuller story. There are three definable kinds of context in which words operate.

The first operates as a function of what kind of primacy words themselves have. In court they are almost everything. The context of court is words. It is about what you say to me and what I say to you and what you said about what I said to you. Words are the stuff of the court's procedure. An analysis of words, how people respond to them, is consistant with this view of context.

In the second context sense, the sense of what goes on around these words in the court itself, also is of significance. The clues of this context will place the words in time and place. They will attribute status to the actors and this will define and influence the power of assertions and responses.

The third context, the pervasive and extant, brings with it all the force of psychological history. In the cases we are concerned with here, it is the history of being a victim. This particular history has its own susceptibilities which can be acted upon by well designed phrases and accusations designed to intimidate. This brings us to a fundamental psychological and legal question. Is it necessary to intimidate, accuse and villify children in order to arrive at the truth of an incident happening or not?

Language, the way it is used and responded to, is the basic medium of court procedure and is worthy of study. It will lead to some understanding of the impact of one actor upon the other and how and why this might be so. It will also give some clues to resisting the forces of intimidation and easy confusion. It will make it less easy to view the business of cross examining child victims, as the magistrate put it, "like shooting rats in a barrel".

"I am not yet born. O hear me. Let not the man who is beast or who thinks he is God, come near me."
(From a paediatrician's waiting room)

3 LISTENING, BUT NOT HEARING

The language used in criminal courtrooms is at best strange to the uninitiated. The armoury of language strategies deployed during cross examination is formidable, so much so that participants and observers often comment: "I can't remember what he said... but it didn't sound right". To not 'get it right' when the witnesses are children, who themselves are the alleged victims of sexual assault, is to be missing something in the administration of justice.

The expressions of concern by professionals working in court and with children are often general and difficult to specify, and this is from people who are trained to listen for meaning. The following comments from an experienced counsellor illustrate this.

"I can't remember exactly the wording he used, but she just looked at him and she didn't know what he meant. I didn't either".

"He put instances to her that she related. Then he said 'Now you can't remember exactly whether he put his penis into your vagina or not, can you?' and then he went on with a similar question. It was almost a threefold question, but before he asked the question he said to her that she only needed to answer by saying 'Yes' or 'No', before he asked the question. The child said afterwards: 'I didn't know what to say. I had to say 'Yes' or 'No'."

In our interviews with paediatricians, counsellors and police we did not achieve any more than these disconnected and general expressions of concern. Even close questioning elicited no more detail. This seemingly uninformed and undetailed information may in fact be a symptom of the pervasive strangeness of courtroom language. During cross examination this strangeness can almost alienate the senses, so much so that observers of such court proceedings report incomprehensibility. It may be a symptom of 'feeling for the child'.

Being a novice at a diplomatic cocktail party would also be strange. Even if everyone spoke in English, the codes, assumptions and expectations would all manifest themselves in a set of language registers that would take time and experience to decipher, let alone respond to. In general that strangeness, which many of us feel in such situations can be explained and possibly better understood by the difference between what is being meant as opposed to what is being said. We apprehend but don't comprehend and we become at least uneasy.

The forms of language can sometimes be totally different to their meanings, as in putting a question rather than asking one. Language is full of meanings that are not discernible by a review of only the words used, and to trace these meanings is to look beyond the mere accumulation of the meanings of simple words... to look at what the words do and suggest... to look at their effect. Some would claim a kind of objective neutrality for language by simply concentrating on the words and their meanings. Language however, is a social and psychological quantity which acts always in some way upon its users.....even by leaving some things unsaid. Most people find it hard to talk about ideas and meanings which are unstated but which they nevertheless apprehend. The non-propositional, the meaning which is built up but not boldly stated, is the subterranean matter in which meaning is grown and dressed neatly with a top soil of words.

Users of any language, to declare themselves in any way competent, have to find their roots in basic meaning, otherwise the surface layer of words will not even be heard in a sense making way. If the meaning generated and the language with which it is encased is outside the hearer's experience, then the hearer will perceive at worst "just sounds" and at best "just words". In either case they will certainly not "hear language".

Just as words on a page cannot be comprehended unless the reader allows his/her visual sense to be driven and focussed by notions, experiences and expectations of what the story is about, a participant in spoken language must have experience of that language and its expression to even hear. This doesn't mean that they need to

understand everything. But it does mean that if they are to understand anything they must first be allowed to hear strings of sound as real language. When hearing a foreign language for the first time we only hear a string of sounds... maybe not even that...just sound. As we become familiar with the person speaking, the situation, some common terms, we begin to discern phrases and eventually words. Yet what is uttered is still a string of continuous sound. Our brains driven by a quest for sense do the analysing, and we carve off certain strings capturing certain meanings. Through practice, need or desire we have entered the world of the previously strange language...we have learned to hear through making sense.

To be able to hear language is the first step towards making sense of what is being said to us. It is an aspect of language development we go through continuously in our native tongue and we go through sporadically as we move around socially, geographically and psychologically.

Children are not usually daunted by the intricacies and complexities of language. They are pre-eminently expert linguists for the first ten or so years of their lives. Irish children in Belfast swap dialects as they pass from one side of the street to the other. Babies work out the names for things without being told... and invent others. Children grow up speaking two or more languages. Most children learn the registers of home, school and the street. There is no case to be made for frailty when it comes to human beings' general ability to make sense and act upon the world. Yet the most complex and sophisticated and always unfinished task of developing this attribute is only achieved through the need and the chance to practice. Learning language, learning to share in the conventions of a message system, is a function more than anything, of trying out what works, of learning some of the conventions for signalling meaning.

It is this immediate access to the rules that any outsider anywhere is by virtue of his/her status denied. This is the frailty... not having access. And cross examination generally capitalises to the maximum upon this by indulging in the athletic use of words, by orchestrating over many utterances, suggestions and propositions which are injected into the language so as not to appear on the surface and by so confounding meaning that the young witnesses and their supporters simply fail to hear. They cannot hear because it doesn't make sense because the language has little in common with theirs....and they have been given no chance to practice.

If a traveller in a foreign land was asked in a strange tongue, in front of a hotel around nightfall, "It's true that you don't want a bed for the night, isn't it?" uttered with confirming shakes of the head, he would as likely as not spend the night in the open. The speaker and the hearer are not matching their language. The speaker has not spoken well and the hearer needs more clues. The real host will eventually provide those clues. The trickster however, certainly will not. Only time to practice or an expert interpreter will give the novice a status commensurate with what she or he might have to say or ask.

"It is sad to hear children attacked by attorneys and discredited by juries because they claimed to be molested yet admitted they made no protest or outcry".
(Summit, 1983)

4 WORDS LOUDER THAN PICTURES

Whenever words are spoken they carry with them the weight of propositions, suggestions and concepts which come from the history of their use. That history may span a short amount of time, as in the conversation we're having now, or a large amount of time, as in all the conversations we have ever had. The more credible or valid a review of language and its impact wants to be the more context it has to take into account. One of the contexts for a question asked in court is all the questions preceding it and, from the standpoint of the reader of transcripts, all the ones that came after.

As a reflection of this view of data we have included here a transcript of a committal hearing of a thirteen year old girl, Beverley. The transcript includes her examination by the prosecutor, her cross examination by the defence, interventions from the bench, and legal argument between bench and counsels.

It is a full word record of what happened in Beverley's presence. The transcript is interrupted when she is taken out of court and resumed when she re-enters.

To this record we have added some of our early notes, observations and queries as we tried to appreciate the language of the situation. This procedure led us towards creating a set of descriptors and indicators for that language and also gave rise to the testing programme on childrens' ability to "hear" questions.

The transcript of the proceedings to which the child is required to respond captures not only phrases and sentences but also the flow of language and thus the way topics, registers and expressions connect to build quite specific meanings. A question 'out of the blue' is different from a question which is part of an observable sequence. The use of one term in a number of different ways across and within questions may be significant. Changing registers from formal to colloquial within the string of questions has an effect of its own. The notes and comments will serve to alert the reader to some of the language strategies employed as the witness's credibility is examined. These strategies often have more to do with creating impression and effect rather than the clarifying of evidence. All markers which identify people, places and times have been altered. All relationships personal, geographical and temporal have been maintained.

BENCH

1. Q. **Beverley how old are you?** A. Thirteen.
2. Q. **Do you go to school?** A. Yes.
3. Q. **What school do you go to?** A. Eastridge High.
4. Q. **And what class are you in?** A. Year 7.
5. Q. **And who is your Teacher?** A. Miss Harste, Miss Halliday, Mr. Eco and Miss Spencer.
6. Q. **That is for all the different subjects you have is it?** A. Yes.
7. Q. **And do you know what a Bible is?** A. Yes.
8. Q. **What is a Bible?** A. It tells you all about God, Jesus and .....
9. Q. **And do you know what an oath is to tell the truth on the Bible?** A. Yes.
10. Q. **What do you understand that to mean?** A. Not lie
11. Q. **And what happens if you do tell a lie?** A. You get punished for it.
12. Q. **Yes, thank you. I am satisfied the person is competent.**

PROSECUTOR

14. Q. **Beverley will you tell the Court your full name, what is your full name?** A. Beverley May Courtney.
15. Q. **And at the moment are you residing at the Children's Centre?** A. Yes.
16. Q. **You are a School girl?** A. Yes.
17. Q. **Do you still go to Pankhurst High School?** A. No.
18. Q. **What School do you go to now?** A. Eastridge High.
19. Q. **Beverley, is the person before the Court, David Courtney, known to you?** A. Pardon.

Why doesn't he ask "Do you know David Courtney? And is he in court?"

20. Q. **Do you know David Courtney?** A. Yes.
21. Q. **And to your knowledge was he married to your mother?** A. Yes.
22. Q. **Were you present when that marriage ceremony took place?** A. I don't get what you mean.

"If this question is necessary, why doesn't he say ".....as far as you know...".

23. Q. **Were you there when they were married?** A. I think so.

MR. MANNERS: **Sorry, did not hear what Beverley said.** A. I said I think so.

Both the "Pardon" and the "I don't get what you mean", are a consequence of the way she is asked the questions.

PROSECUTOR:

24. Q. **Did you used to live in Horsley with your mother and David?** A. Yes.
25. Q. **Did you also live with your brothers and sisters?** A. Yes.
26. Q. **Were they John who is fifteen years of age, fifteen years of age, Greta, Ray and your twin sister Sonia?** A. And Mary.

He doesn't acknowledge her contribution.

27. Q. **How old do you believe you are at the moment?** A. Thirteen.
28. Q. **Do you recall before living at Horsley you lived at Crowley and about that time you were in Sixth Grade at School?** A. Yes.

There are three qualifiers inside the question.?

29. Q. **Do you remember an occasion when you were in Sixth Grade, around your birthday?** A. Yes.
30. Q. **At that time were you living at 19 Morrow Street Crowley?** A. (No verbal answer).

Who? What?

31. Q. **Can you remember an evening during - withdraw that. Can you remember an evening when you were in your bedroom asleep?** A. Yes.

(Do you know what I know you think I'm talking about?)

32. Q. **Did something happen between you and your stepfather?** A. Yes.
33. Q. **Did he enter your bedroom?** A. Yes.

The question seems to "specify".... but by implication.

34. Q. **What happened then?** A. Then he walked into my room and.....
35. Q. **Walked into your room and what happened?** A. Took my knickers down.

Who?

This construction eliminates agency. No-one did anything. It happened.

36. Q. **How were you dressed at that stage?** A. I was in my nightie and I had my nickers....

Interruped. Beverly is not allowed to finish.

37. Q. **You say he took your nickers down, what room were you in at that stage?** A. I was in with Sonia.

What does this mean? What is the time frame being implied?

38. Q. **Sorry?** A. I was in the room up the end.
39. Q. **Did you share that room with anyone else?** A. Yes, Sonia.
40. Q. **Do you know where your mother was at that stage?** A. I think she was at Aunty Margaret's I think.

What is the "stage" referring to? The time of night? Living in Crowley? When abuse started?

41. Q. **When he took your knickers down did he say anything?** A. Yes.
42. Q. **What did he say?** A. He said "This won't hurt"..
43. Q. **Did you feel anything? Were you frightened?** A. Yes.
44. Q. **What happened then?** A. When he fingered me.
45. Q. **When you say he fingered you Beverley can you tell the Court exactly what he did?** A. He put his finger into my vagina.
46. Q. **Did you say anything to him?** A. No, I just screamed.

MR. MANNERS: Sorry, I did not hear that.

A microphone would be handy.

PROSECUTOR: ....just screamed.

47. Q. **Did you scream out?** A. Not very loud.

MR. MANNERS: Sorry, I cannot hear her.

BENCH: Not very loud. A. Not very loud.

PROSECUTOR:

48. Q. **Yes, then what happened?** A. Then he went out of the room.
49. Q. **How was he dressed on that occasion?** A. He had his, he had jeans, shoes and a shirt on.
50. Q. **Beverley do you know what the term penis is, what is a penis?** A. It's a doover. *Is the question about the term or the thing?*
51. Q. **Right, it is part of a male or a female body?** A. A male. *She moves from singular to collective.*
52. Q. **And whereabouts is it?** A. Between their legs.
53. Q. **When you were living at Crowley did something happen with David's penis?** A. Oh.... *This is a distant way of talking about an intimate happening.*
54. Q. **Did he visit your bedroom on any other occasion?** A. No.
55. Q. **What did you feel when he fingered you on the occasion you told the Court about?** A. Scared. *Quick change in the types of information being sought*
56. Q. **Did you feel any pain?** A. Yes.
57. Q. **When you screamed did he say anything to you?** A. No.
58. Q. **Did you do anything when he left the room?** A. ....(inaudible) toilet.
59. Q. **Do you know where Sonia was at that stage?** A. No. *..... of the night?...."*
60. Q. **Was she in the room?** A. No.
61. Q. **Did anything else happen when you were living at Crowley?** A. Yes.
62. Q. **When was that?** A. I think two nights, two nights away from the first time.
63. Q. **Before or after?** A. After. *"Away from the first time...." must equal "after".*
64. Q. **What happened on that occasion?** A. He rooted me.

BENCH: I'm sorry, I know it is terribly hard, but you've got a soft voice, could you just raise it a little bit, just take your time. A. Yes.

PROSECUTOR:
The answer was "he rooted me", Your Worship.

I wonder what Beverly thinks of this conversation.

BENCH:
Thank you.

MR. MANNERS: Sorry, I still cannot hear even what my friend said.

PROSECUTOR:
"He rooted me".

65. Q. **Where were you when he rooted you?** A. In his bedroom. *There is an acceptance here of Beverley's language.*
66. Q. **How did you get into his bedroom?** A. He came and got me.
67. Q. **Where from?** A. My bedroom and he put me on his bed and I woke up.
68. Q. **Did you walk to the bedroom?** A. No.
69. Q. **How did you get there?** A. He carried me.
70. Q. **Did he say anything to you as he was carrying you?** A. No.
71. Q. **Did he say anything to you when he entered your room?** A. No 'cause I was asleep.. *All the question markers come at the beginning of the questions.*
72. Q. **Well, when did you wake up?** A. When he put me on his bed.
73. Q. **Do you know where your mother was then?** A. No.
74. Q. **Was she home?** A. No.

MR. MANNERS: What did she say? I cannot hear her.

BENCH: The answer 'No'.

PROSECUTOR:
So on that occasion he put you on his bed. What happened next? A. Then he took off my nightie and my knickers.

75. Q. **Yes. A.** And he got undressed. *The prosecutor allows Beverly to continue her story in her own terms.*

76. Q. **Yes?** A. Then he hopped on me and was moving up and down then while he was moving up and down he was breathing hard..

77. Q. **Do you know where his penis was when he was on top of you?** A. Yes.

78. Q. **Where?** A. Inside my vagina.

79. Q. **Did you feel anything at that stage?** A. Yes.

80. Q. **What did you feel?** A. Sore.

81. Q. **Did he say anything to you?** A. No.

82. Q. **Did you say anything to him?** A. (No verbal answer.).

83. Q. **How long did that take place?** A. Two nights after.

84. Q. **You say two nights, was there another incident?** A. That was the same incident.

85. Q. **Well what did you mean when you said "two nights"?** A. Two nights after the first.

86. Q. **Yes, and after he moved up and down what happened next?** A. He was breathing hard and then he hopped off and then....

87. Q. **Did he say anything when he hopped off?** A. No, I hit him and then I went to my room.

88. Q. **Could you see his penis on that occasion?** A. No.

89. Q. **What position were you in on the bed?** A. On my back.

90. Q. **Where were your legs?** A. Together.

91. Q. **How were your legs when his penis entered your vagina?** A. Were open.

Does this refer to "the incident" or "the occurances"?

I find this confusing.

Does this mean anytime during the incident or as he did something in particular or when he'd "hopped off"?

BENCH

Q. **Sorry?** A. They were open.

PROSECUTOR:

92. Q. **And how were your legs opened Beverley. Who opened your legs?** A. Uncle David.

93. Q. **Did you do anything at that stage?** A. No.

94. Q. **Did anything else happen to you at Crowley?** A. No. We moved to Horsley.

95. Q. **Do you recall when it was you moved to Horsley?** A. In the middle of Sixth Grade I think.

96. Q. **Do you know the address at Horsley?** A. Yes.

97. Q. **What was the address?** A. ...(inaudible) Street I think it was where we lived, the number of the house was 19..

98. Q. **....Your Worship.**

He presumably means 'of that kind'. If he specified this in some way it would reduce a lot of unnecessary searching on her part.

MR. MANNERS: Sorry, I cannot still....

PROSECUTOR: Can you speak up a little bit please Beverley.

The use of "at that stage", "on that occasion" and "take place" do lead the hearer to a less personal impression of the action.

BENCH: Number 19.

MR. MANNERS: I am having great difficulty hearing anything that the young person is saying.

BENCH: Beverley, look I know it is terribly hard for you, but this is a rather big room and we have got to hear, do you understand? A. Yes.

99. Q. **Now you have got a soft voice, you might have to just raise it a little bit, can you do that for us. Thanks.**

Who's responsibility is this?

MR. MANNERS: Thank you, Sir.

The witness has to bear the responsibility for this fact.

PROSECUTOR:

100. Q. **Do you recall where you lived when you moved to Horsley?** A. Morrow Street and the number of the house was 19.

101. Q. **How many houses did you live in that street?** A. One

102. Q. **Was there a Cafe near the house?** A. Yes

103. Q. **Where was the Cafe?** A. Across the road

104. Q. **How long did you live in that house?** A. I can't remember

105. Q. **Was it weeks, days, months?** A. I think a few weeks and then we

Why can't he say "remember" or "Can you tell us the address?"

How long ago?

How old was she then?

moved to a Commission house

106. Q. **Did anything happen to you when you were living in the house near the Cafe?** A. No

107. Q. **You told the Court you moved to a Commission house, how far was that from the other house?** A. A few blocks away

108. Q. **Was that still in Horsley?** A. Yes

109. Q. **Did something happen between you and David in the house we have referred to as the Commission house?** A. Yes

110. Q. **What happened there?** A. Well Mum went out and Uncle David came home from darts and he asked me to make him a cup of tea and I made him a cup of tea and I took it into his room and when I was coming out, going out of the room he grabbed me.

111. Q. **Yes?** A. Then he pushed me onto the bed.

112. Q. **Now Beverley do you recall when that was?** A. A third time.

113. Q. **How long ago did that happen?** A. I can't remember.

114. Q. **Do you know whether it was this year, last year or the previous year?** A. No, no.

115. Q. **What happened after he pulled you down onto the bed?** A. I had my uniform on.

116. Q. **What uniform was that?** A. My school uniform.

117. Q. **Yes?** A. And he took it off and my knickers.

118. Q. **Yes, what was he wearing?** A. I couldn't see.

119. Q. **Well what happened next?** A. Then he hopped on top of me.

120. Q. **Yes?** A. Then he rooted me and he was breathing hard and then I said to him I was going to tell Mum and.....

121. Q. **Just pause there for a moment. You say he rooted you Beverley, what did he do?** A. He put his penis in my vagina and when he stopped I said I was going to tell Mum and he said if I tell Mum he'll make sure I would go into a home.

122. Q. **Do you know where your mother was at that stage?** A. No, not really.

123. Q. **Did you tell your mother at that stage?** A. 'Cause he said if I did I'll go into a home.

124. Q. **Did you believe that?** A. Yes

125. Q. **Do you remember last August School holidays? Where were you living then?** A. In Horsley I think.

126. Q. **Where were you living then?** A.In Horsely I think

127. Q. **Was it the house near the Cafe or the Commission house?** A. Commission.

128. Q. **Did something happen to you on that occasion?** A. Yes.

129. Q. **What happened then?** A. Well he rooted me.

130. Q. **Well where were you when that took place?** A. In his room.

131. Q. **Can you tell the Court how you got into his room on that occasion?** A. No.

132. Q. **Did you walk in?** A. No.

133. Q. **How did you get there?** A. Can't remember.

134. Q. **When you say he rooted you in his room on that occasion can you tell the Court what happened then?** A. Well he took my clothes off and he was on me and he was moving up and down and he stopped and then I decided that I wasn't going to go home the next day when I was at School.

135. Q. **Did he place his penis in your vagina on that occasion?** A. Yes

136. Q. **Did you have any conversation on that occasion?** A. No.

137. Q. **On each of these occasions - withdraw that. Did you ever tell anyone about these occasions?** A. Yes.

138. Q. **Who did you tell?** A. Greta.

139. Q. **Greta is your sister?** A. Yes, and down at Crowley I told Chloe and Rachel.

140. Q. **Are they relatives of yours?** A. Yes, cousins.

141. Q. **Did you run away from home?** A. Yes.

142. Q. **Why did you do that?** A. 'Cause I didn't want to get hurt anymore, 'cause I didn't want to get hurt anymore.

There are different registers used here. This leads also to the use of different notions of agency.

1 → 2 → 3 = Somebody did something → Something happended → Somebody says something happened.

Note: Ambiguous expressions make the hearer work harder at making sense.

Talking to the witness is punctuated by addressing the court.

143. Q. **And were you apprehended by the Police?** A. Pardon.
144. Q. **Were you caught by the Police?** A. No.
145. Q. **Did you later speak to an Officer of the Youth and Community Services?** A. Yes.
146. Q. **And in turn did you then speak to Police Officers?** A. Yes.
147. Q. **Did you later go to The Prince of Wales Hospital in Sydney?** A. Yes.
148. Q. **And there were you examined by a Doctor Hay?** A. Yes.
149. Q. **Did you ever see David with anyone else apart from yourself?** A. No.
150. Q. **Did you ever see him with your sisters?** A. Yes.
151. Q. **When was that?** A. I can't remember.
152. Q. **Do you recall whether it was this year or last year?** A. No.
153. Q. **Do you recall where you were?** A. At Horsley.
154. Q. **At the Cafe house or the Commission house?** A. Commission.
155. Q. **What did you see on that occasion?** A. Uncle David, I walked into the bedroom to tell him that Sonia was sick and he was on Greta.
156. Q. **Did you notice anything about Greta?** A. Yes, she was crying.
157. Q. **Did she have any clothing?** A. I don't think so.
158. Q. **Did David have any clothing on?** A. Don't think so.
159. Q. **Did anyone say anything?** A. Yes.
160. Q. **What was said?** A. Uncle David said, told me to get out.
161. Q. **Did you leave the room?** A. Yes.
162. Q. **Did you later talk to Greta?** A. Yes.

Caught?

Beverly has been made into the primary agent. This is not an impression consistent with being a victim.

This presumably means sexually interferring with anyone else. The questions asked depend on a totally shared context between the questioner and the responder.

"Was she dressed?"
"Was she undressed?"
"What clothes did she have on/off?"
Which of the above does the best job of clarifying the evidence.

An alternative might be:

Q. Who? A. David Q. What did he say?

CROSS EXAMINATION
MR. MANNERS:

1. Q. **Beverley you have been staying at Meleymead have you not?** A. Yes.
2. Q. **And you ran away from Meleymead did you not?** A. Yes.
3. Q. **Why did you run away from Meleymead?** A. Because I didn't like the place.
4. Q. **You liked living at Crowley did you not?** A. Yes.
5. Q. **You love your mother?** A. Yes.
6. Q. **You do not like your Uncle David?** A. No.
7. Q. **And do you know why you left Crowley?** A. Uncle David got a promotion to go to Horsley on the silos.
8. Q. **And you wanted to stay at Crowley, did you not?** A. Yes.
9. Q. **Now during the School holidays in August this year where were you living?** A. Horsley.
10. Q. **At the Commission house?** A. Yes.
11. Q. **And who lived there?** A. My two brothers, step-brothers, Greta, Sonia, Mary and I, Mum and Uncle David.
12. Q. **And that was a three bedroom house?** A. Yes I think so.
13. Q. **And the boys slept out the back did they not?** A. Yes.
14. Q. **And you shared a room with Sonia is that not right?** A. Yes.
15. Q. **Sonia is your twin sister?** A. Yes.
16. Q. **She is very close to you is she not?** A. Yes.
17. Q. **You are very good friends as well as being twin sisters? Is that not right?** A. Yes.
18. Q. **And quite often you and Sonia share the same bed do you not, sleep together do you not?** A. Yes.
19. Q. **Now, where was your room, you and Sonia's room from your mother's room?** A. Um it was next door.
20. Q. **It was next door? And you mother and Uncle David's bedroom door was always open was it not?** A. Yes.
21. Q. **And their room, their bedroom was right next to the kitchen?** A. Yes.
22. Q. **The kitchen is a large open area is it not?** A. Yes.
23. Q. **It has a table in the middle? When you got up first thing in the morning, when you were living at Horsley, you all, all the children had chores did they not? Things to do?** A. Yes.

This question is in statement form and the question marker does not appear until the end.

He uses negative affirmation. This makes denial difficult.

These are big emotional issues. There is no room here for explanation or resolution.

The cross examiner's use of statements establish him as knowledgable and in control of both the information and the themes.

24. Q. **You had set things to do did you not? And the house worked on a routine?** A. Yes.

Are these just details.

25. Q. **And what chores did you have to do first thing in the morning, after you got up?** A. Wiping up, and do, clean my room.
26. Q. **And Greta had chores too did she not?** A. Yes.
27. Q. **And Sonia?** A. Yes.
28. Q. **One of Greta's chores was to take some tea in to her?** A. Uncle David, make breakfast for Mum and Uncle David.
29. Q. **Right. And she did that every morning did she not?** A. Yes.
30. Q. **Did she ever, was she ever away from Horsley this year, up until you left home?** A. Yes she used to babysit.

He establishes the active agency of "she" by using "did" then moves to the less active "was".

31. Q. **And where did she babysit?** A. With, for a friend, that used to come around.
32. Q. **And that was in Horsley was it?** A. Yes.
33. Q. **And, but she had never stayed overnight would she?** A. Oh yes, a few nights she did.

By using "and" he continues his own control of the information then adds the "but" which implies something about what the witness is saying. Is she saying anything?"

34. Q. **And when were those nights?** A. She stayed overnight when she was babysitting, I can't remember the night.
35. Q. **That was at the beginning of the year was it not?** A. Yes.
36. Q. **So around about August she was living all the time, she did not go away from Horsley?** A. No.
37. Q. **From the Commission house. So she would take tea into, or breakfast into your Uncle David and your mother every morning?** A. Yes.
38. Q. **What was the weather like at Horsley in August this year, do you remember whether it was hot or cold?** A. No.
39. Q. **It was winter time was it not?** A. I think so.
40. Q. **It was very cold was it not?** A. Yes.
41. Q. **And you and Beverley, sorry you and Sonia and Greta usually wore jeans to school did you not?** A. Yes.
42. Q. **When it was cold? In fact you did not like your school uniform did you?** A. No.

"In fact....." suggests Beverly had said otherwise.

43. Q. **Now can you remember the first incident that something, that you say Uncle David interfered with you at Horsley?** A. It was at the Commission house.

This is an unclear construction but establishes "you say" as an embedded proposition.

44. Q. **Yes, and it was in the morning was it not?** A. No.
45. Q. **It was not in the morning?** A. No.
46. Q. **When was it?** A. In the night.
47. Q. **And what time of night?** A. I don't know.

There is a sudden shift here from large time (when we were at Horsely) to small time (the morning).

48. Q. **You do not know?** A. No.
49. Q. **Sorry, could you tell me again what happened?** A. Well he came into my room.

His repetition confirms her "not knowing"

50. Q. **Yes.** A. And he took down my blankets, and took down my knickers, and um he said this wouldn't hurt.
51. Q. **I see, and that was at Horsley?** A. Yes.
52. Q. **In the Commission house?** A. Yes.
53. Q. **And you were awake?** A. Yes.
54. Q. **And where was Sonia?** A. I don't know.
55. Q. **You do not know?** A. No.
56. Q. **And was that in August this year?** A. Yes.
57. Q. **Was it dark outside?** A. I don't know, I didn't look outside.
58. Q. **I see. Was it night?** A. Yes.
59. Q. **You sure it was at night?** A. Yes it was.
60. Q. **And how long had you been in bed for before this happened?** A. We were going to bed at 7.30.
61. Q. **I see, and how do you know it is 7.30?** A. Because we always go, we always go to bed after Sale of the Century.
62. Q. **I see, and you were watching television on this night, were you?** A. Yes.
63. Q. **And after Sale of the Century, you and your sisters went to bed is that right?** A. Yes.

Total absence of question markers....except for possible intonation.

64. Q. **And Greta does not sleep in your room?** A. No.

65. Q. **She shares a room with Mary does she not?** A. Yes.
66. Q. **So do all four of you go to bed straight after Sale of the Century?** A. Yes all of us do.
67. Q. **And that is what happened on this night, this first incident?** A. Yes.
68. Q. **At Horsley is that not right?** A. (No verbal answer).
69. Q. **Sorry?** A. Yes.
70. Q. **And where was your mother?** A. I don't know.
71. Q. **You do not know, but she was in the house when you went to bed was she not?** A. I think so.
72. Q. **Yes. Sorry, you think so?** A. Yes.
73. Q. **Can you not remember?** A. No.
74. Q. **Where would she have been if she was not in the house?** A. I don't know.
75. Q. **She did not go away anywhere in August holidays did she?** A. Yes, she went away for a week to Aunty Thelma's.
76. Q. **That was not in the school holidays was it?**A. I can't remember.
77. Q. **No it was not in the holidays at all? It was before the holidays?** A. (No verbal answer).
78. Q. **Or was it after the holidays?** A. I can't remember.
79. Q. **But apart from that week that your mother went to your Aunt Thelma's she was at the house, the Commission house at Horsley all the time, was she not?** A. I don't know.
80. Q. **As far as you know, she was, is that not right?** A. Some, some nights she was 'cause she went over to Kathy's because she lived next door to us.
81. Q. **I see. But she would be always there to put you to bed would she not?** A. No, no-one put us to bed, we had to go ourselves.
82. Q. **I see, but she would be in the house when you went to bed?** A. Yes, I think so.
83. Q. **And when your Uncle David came in to your room, did he turn the light on?** A. No.
84. Q. **You do not know?** A. No.
85. Q. **Did he close the door after him?** A. I think so.
86. Q. **And that is when he came in?** A. Yes.
87. Q. **And he closed the door?** A. Yes I think so.
88. Q. **And you say you think so?** A. Yes.
89. Q. **Are you not sure?** A. Yes, I'm not sure.
90. Q. **You are not sure. You usually sleep with your bedroom door closed or open?** A. Closed.
91. Q. **Did you hear him come into your room?** A. No, because I was asleep.
92. Q. **You were asleep? And did you hear Sonia leave the room?** A. I don't really know.
93. Q. **You do not really know?** A. Yes.
94. Q. **So you do not remember if you heard Sonia leave the room do you?** A. Yes.
95. Q. **When your Uncle David came into the room, did you look to see where Sonia was?** A. No.
96. Q. **She was not sleeping in your bed that night, or was she?** A. She wasn't.
97. Q. **Was there any reason for that?** A. She doesn't sleep in my bed every night.
98. Q. **I see. Just when you want to talk or not?** A. Yes.
99. Q. **What did, what did he do, sorry, did you wake up as soon as Uncle, your Uncle David came into the room?** A. Yes.
100. Q. **And did he say anything to you?** A. No.
101. Q. **And you saw him close the door behind him did you?** A. No, because it was dark.
102. Q. **I see, so you did not know whether it was Uncle David did you at that stage?** A. No.
103. Q. **So somebody came into your room?** A. Yes.

Echoing the witness's "I don't know" as "You don't know" can lead the meaning from 'happen not to have the information' to 'the person talking is unknowledgable'.

Contribution of information by the witness is negated.

This creates an impression of insight when the interchange suggests otherwise.

Echo.

"I think so" has been converted to "I'm not sure" and confirmed as a statement of fact.

What is the question? If she did not remember then "Yes" is grammatically right. But if she had answered "No" I wonder if it would have been regarded and differently. Ref. Q.6 of cross examination.

104. Q. **And somebody, that person, then pulled the blankets down from your bed is that right?** A. Yes.

105. Q. **And that person who you do not know, who you did not know at that stage?** A. Mmm.

What time frame?

106. Q. **Took your nightie off?** A. He didn't take my nightie off, he took my knickers off.

107. Q. **Took your knickers off? And you did not say a thing?** A. No.

By using "a thing" instead of "anything" he echoes the expression "... and she didn't do a thing to stop it!"

108. Q. **You were frightened?** A. Yes.

109. Q. **Did you scream?** A. No. .

110. Q. **Why did you not scream?** A. Because I was frightened.

111. Q. **Did you try and get away?** A. No. I tried to get my blankets.

112. Q. **You tried to get your blankets to cover up?** A. Yes.

113. Q. **And, but you did not know who this person was?** A. It must have been Uncle David because there's no-one else would come into my room and do that.

These do not mean the same.

114. Q. **I see. But you had no idea who it was but you thought it was your Uncle David?** A. Yes.

This sentence is internally contradictory.

115. Q. **Is that right?** A. Yes.

116. Q. **And after this person took your knickers off, what happened then?** A. He fingered me.

What has she admitted as being right? Is it that she "had no idea" or that she "thought it was your Uncle David".

117. Q. **He fingered you. And how long did that last?** A. For a while.

118. Q. **Did you scream out?** A. Yes.

This depersonalises the action. Does this suggest 'for help'. What's the implied difference between 'scream' as opposed to 'scream out?

119. Q. **And why did you scream out?** A. Because it hurt.

120. Q. **You were not frightened?** A. Yes.

121. Q. **You were frightened? Why did you not scream out when you were frightened?** A. Because I was too frightened to.

122. Q. **And there was no conversation?** A. No.

123. Q. **So this could have been some stranger?** A. And when he was doing, he said this won't hurt.

'Both a yes and a no answer would admit the unstated proposition that anything said, if said, would be 'conversation'. This is an example of a nonpropositional message, that is, something that is not stated but nevertheless clearly there.

124. Q. **And did you recognize the voice did you?** A. Yes.

125. Q. **And it sounded like Uncle David?** A. Yes.

126. Q. **So those words were the only identification you had of him?** A. Yes.

127. Q. **Now how loud did you, did you scream?** A. Not long.

128. Q. **How loud?** A. Not loud.

129. Q. **Not loud. Why did you not scream loud?** A. Because I didn't want to get in trouble.

130. Q. **You did not want to get into trouble?** A. Yes.

131. Q. **You were able to scream when he hurt you?** A. Yes.

132. Q. **But you were not able to scream when he frightened you?** A. No.

133. Q. **Sonia could have heard you if you had screamed could she not?** A. Yes I think so.

This echoes the use of 'out' in Q's 119/121.

134. Q. **Sonia has not said, sorry, have you said anything to Sonia about this incident?** A. No.

135. Q. **You have not told Sonia at all?** A. Um I told her, just before I, when I ran away.

136. Q. **So you told Sonia about this night?** A. Yes.

137. Q. **Did you not ask Sonia if she heard Uncle David or this person on that night?** A. Yes.

138. Q. **Did you not ask Sonia if she heard Uncle David or this person on that night?** A. Yes.

139. Q. **And what did she say?** A. She said she did, and Uncle David told me to tell her that a dog bit me.

BENCH: Sorry? A. Uncle David told me to tell Sonia that a dog bit me.

MR. MANNERS:

Note: What the witness answers to includes both propositional and non-propositional information.

139. Q. **I see. When did Uncle David tell you to tell Sonia that a dog bit you?** A. When he was in my room.

140. Q. **On this night?** A. Yes.

141. Q. **Was there any other conversation?** A. No.

142. Q. **So there were two bits of conversation, there was him saying "this won't hurt"?** A. Yes.

143. Q. **And then he said "Tell Sonia the dog bit you"?** A. Yes.
144. Q. **Now is that all the conversation there was?** A. Yes.
145. Q. **The dogs do not sleep in your room do they?** A. No.
146. Q. **And after he had finished, or this person had finished interferring with you, what happened?** A. He went out.
147. Q. **He went out, and did he close the door after him?** A. Yes.
148. Q. **And did you say anything to Sonia then?** A. No.
149. Q. **Did you see, try and see if she was awake?** A. No.
150. Q. **Or indeed if she was in her room?** A. No.
151. Q. **You did not even think to speak to your sister?** A. No.
152. Q. **You went back to sleep did you?** A. Yes.
153. Q. **And when was the next incident at the Commission house?** A. (No verbal answer).
154. Q. **When was the next?** A. Two days after.
155. Q. **Two days after, so that would, was this in August this year?** A. Yes I think so.
156. Q. **And school holidays?** A. Just before school holidays.
157. Q. **Just before the school holidays? And what happened on this occasion?** A. He rooted me.
158. Q. **Well can you tell me how that came to pass?** A. No.
159. Q. **Sorry?** A. No.
160. Q. **You cannot tell me what led up to?** A. No.
161. Q. **You cannot remember?** A. (No verbal answer).
162. Q. **You cannot remember anything about it at all?** A. No.
163. Q. **You have forgotten everything about it?** A. Yes.
164. Q. **You have forgotten where it took place?** A. No.
165. Q. **Where did it take place?** A. Horsley.
166. Q. **Horsley. Apart from the fact that it took place in Horsley, there is nothing else you can remember about it?** A. Yes.
167. Q. **Is that, is what I have said correct?** A. Yes there's nothing else.
168. Q. **There is nothing else you can remember?** A. No.
169. Q. **Sorry, keep your voice up?** A. No.
170. Q. **Do you remember the day of the week?** A. No.
171. Q. **Do you remember whether it was night or day?** A. It was night.
172. Q. **It was night. Do you remember if it was early at night? Or late at night?** A. No.
173. Q. **You do not? Do you remember if you were in bed, or you were up?** A. I can't remember.
174. Q. **You cannot remember. Do you remember who was home?** A. My sisters and brothers.
175. Q. **Your sisters and your brothers? And do you remember where you say Uncle David rooted you?** A. No.
176. Q. **When you come home from school, if you had been wearing school uniform you always change do you not, get out of your school uniform as quickly as you can?** A. Sometimes.
177. Q. **You do not like wearing it do you?** A. No.
178. Q. **It is not very attractive is it?** A. No.
179. Q. **So really you try and get out of your school uniform as quickly as possible?** A. Yes.
180. Q. **And you put on some jeans or something like that if you are just going to do your homework or do chores around the house do you not?** A. Yes.
181. Q. **Because you do not want to get your school uniform dirty, so you have to wash and iron it again, is that right?** A. Yes.
182. Q. **So every day really you get out of your school uniform, every school day that you wear your school uniform you take it off as soon as you get home do you not?** A. Yes, nearly every day.
183. Q. **Sorry?** A. Nearly every day.
184. Q. **Nearly every day, well can you remember any day where you did not take if off?** A. When I went down the shop with Greta.

This is tied in with the nopropositional message about conversation stated at Q.122.

By answering at all, Beverly admits the cross examiner's definition. (When did you stop beating your wife?)

He questions her credibility by presuming how she should act in the circumstances.

In this exchange there is a change of register, change of agency and a denial of Beverly's message.

What is she saying "no" to? And what does she mean? What do others in the court hear in her answer? What has she heard of the question?

He is establishing ownership of information and theme....and propositions contained within.

There is a change of pace here as a string of 'No' answers is elicited. When information is forthcoming the examiner moves down a level of detail to elicit more 'No' answers.

She responds with information then he changes the topic from a neutral issue (who was home) to an emotive issue (saying, rooting).

185. Q. **I see, so that was one day when you went down to the shop with Greta, can you remember any other days?** A. Yes I was, I just went to my friend's place and I was just playing with, playing in my school uniform.

186. Q. **I see, that was before you went home?** A. No. After.

187. Q. **So you can remember two days can you?** A. Yes.

188. Q. **And that would be about all would it not?** A. Yes.

189. Q. **Did anything happen to you during the August school holidays?** A. I think so.

190. Q. **You think so?** A. Yes.

191. Q. **What do you think happened to you?** A. Uncle David rooted me.

192. Q. **A third time?** A. Yes.

193. Q. **Where was this at?** A. He never, he tried to and I was sitting on the lounge, and he tried to, he undone my zipper and I ran outside.

194. Q. **I see, so he did not root you?** A. No.

195. Q. **You say he tried to undo your zipper?** A. Yes.

196. Q. **Who did you tell about this?** A. No-one.

197. Q. **You have - , this is the first time you have told anybody about it, is it not?** A. No. At school I told Wendy Mills.

198. Q. **Right you told Wendy Mills. Did not tell anybody from the Youth and Community Services did you?** A. No.

199. Q. **You did not tell the Police?** A. No.

By using the negative here he suggests an ommission on her part.

200. Q. **And today, the second time you say, that you have spoken about this incident is that right?** A. Yes.

201. Q. **Yes. So he did not root you then did he?** A. No.

202. Q. **Right. So did anything else happen during the August school holidays?** A. Not that I can remember.

203. Q. **And what about after you went back to school again?** A. When I went to school I decided that I wasn't going to go back home.

204. Q. **Right.**

BENCH:.

205. Q. **Sorry, when you went back to school you?** A. I decided I wasn't going home.

MR. MANNERS:

Repeat / Echo.

206. Q. **Was that the first day of school?** A. I don't think so.

207. Q. **You do not think so. So other than the incident that you have told His Worship today about Uncle David taking down your zip?** A. It's in the um, thing there.

There is no suggestion elsewhere in this transcript that she is addressing "His Worship".

208. Q. **In what thing where?** A. It's on the papers down there.

209. Q. **Well I do not get to see those papers Beverley, so will you, do you mind telling me?** A. No.

She has told 'her story' many times before.

210. Q. **You do not mind, so is it what you are saying that during the school holidays, your Uncle David tried to take, or took you zip down, you say that is all that happened?** A. Yes.

211. Q. **And as soon as you went back to school, you ran away?** A. Yes.

212. Q. **So nothing else happened?** A. No.

213. Q. **Now, could we go back to, has your Uncle David put his penis into your vagina whilst you were living at the Commission house at Horsley?** A. Yes.

214. Q. **And when was that?** A. In the middle of sixth grade.

215. Q. **In the middle of sixth grade? And when were you in sixth grade?** A. At Crowley.

216. Q. **Right. So the only time he put his penis into your vagina was at Crowley? Is that right?** A. Yes.

I'm confused

217. Q. **And so he did not put his penis into your vagina at Horsley?** A. Yes.

218. Q. **I am sorry, Beverley, I thought you said the only time he did it was at Crowley.**

BENCH: No, this has been a problem, I think you will find that the emphasis on the Commission house. This happened before when you were talking about at the Commission house and then on the second occasion, and two days later. Now you said Horsley.

MR. MANNERS: Well I just...

BENCH: I think to be fair to clean it up...

MR. MANNERS: Certainly I will...

BENCH: Just indicate that to you.

MR. MANNERS: I do not mean to be...

BENCH: No, no, I am just saying to be fair to clean it up, both to the Witness and to the Defendant.

MR. MANNERS: All right.

219. **Q. Where did Uncle David put his penis into your vagina?** A. At Horsley.
220. **Q. At Horsley. Now whereabouts at Horsley?** A. At the Commission house.
221. **Q. At the Commission house, and where did he do this?** A. In the August holidays.
222. **Q. In the August holidays?** A. Yes, just before.
223. **Q. Just before the August holidays. Did you not say to me a few minutes ago that he did not put his penis in your vagina at Horsley?** A. He did.

.....at the time when it was confusing and the Bench intervened ?

What she said was "Yes" to his negative statement.

224. **Q. He did. You are saying he did?** A. Yes.
225. **Q. Can you tell me where he did?** A. In his room.
226. **Q. In his room. And what time of day was that?** A. Night-time.
227. **Q. Night-time. And this was just before the August school holidays this year?** A. Yes.
228. **Q. You are certain of it?** A. Yes I think so.
229. **Q. You think so?** A. Yes.
230. **Q. How certain are you?** A. A little bit.
231. **Q. A little bit. And what did you remember about it?** A. When he rooted me.
232. **Q. Well can you tell me anything more about it?** A. No.
233. **Q. There is nothing more that you can remember?** A. No.
234. **Q. Tell me about any other incidents?** A. No.
235. **Q. There were no other incidents at Horsley?** A. Yes there was but I can't tell you.
236. **Q. I am sorry, you cannot tell me?** A. Yes.
237. **Q. Why can you not tell me?** A. I don't know.
238. **Q. You cannot tell me. Have you told anybody else?** A. Yes.
239. **Q. Who have you told Beverley?** A. Some kids at school.
240. **Q. Perhaps Beverley could...**

Follow up the issue of the willingness of sexually abused children to disclose to different people.

BENCH: Would you like a glass of water or would you like a little rest?
A. Yes. I think I will give the Witness a break.

MR. MANNERS: Yes, certainly Your Worship I do not want...

BENCH: I will take a short adjournment so the Witness can have a break.

MR. MANNERS:

241. **Q. Beverley before lunch you mentioned that at Horsley various things happened, now this was the Commission house at Horsley, is that not right?** A. The Commission house, yes.
242. **Q. Beg your pardon?** A. Yes.

243. Q. **Yes, and in Horsley nothing else happened other than at the Commission house?** A. No nothing else happened other than at the Commission house.

244. Q. **Thank you, and do you say there were two incidents, or more than two incidents at the Commission house?** A. Two incidents.

245. Q. **Two incidents. Now you are certain about that?** A. Yes.

246. Q. **And when did those incidents take place, at the Commission house at Horsley?** A. I don't remember.

247. Q. **You do not remember. Do you remember if they took place this year?** A. No they didn't take place this year.

248. Q. **Sorry?** A. They didn't take place this year.

249. Q. **They did not take place this year?** A. No.

250. Q. **Are you certain about that?** A. Yes.

251. Q. **Where do you say, when do you say these incidents took place? Do you say last year or the year before that?** A. I don't remember.

The forced choice construction of the questions suggests that one or the other has to be true.

252. Q. **You do not remember?** A. No.

253. Q. **And do you think it might be 1984?** A. I think.

254. Q. **You think it was 1984?** A. Yes.

255. Q. **And do you remember whether it was in the summer-time or the winter-time?** A. I think it was summer.

256. Q. **You think it was in the summer, and can you remember if these incidents took place during the school holidays or during school times?** A. No.

257. Q. **You do not remember?** A. No.

258. Q. **Now who did you tell about these incidents?** A. Down at Crowley I told.

259. Q. **Well leave Crowley aside and just looking at what happened at the Commission house at Horsley last year?** A. I told Greta and at School and I told Wendy Mills.

This in part accepts Beverly's assertions.

260. Q. **Right, and you did not tell anybody else?** A. Yes, I told Felicity Mills when I ran away from home.

261. Q. **Right, but you ran away from home over a year later, do you understand my question?** A. No.

What question?

262. Q. **You said the incidents at Horsley at the Commission house took place last year, do you remember saying that?** A. Yes.

263. Q. **And you agree with me that you ran away from home?** A. Yes.

264. Q. **...in August or September this year, do you say that you did not tell anybody for all that time from?** A. I told some friends at school.

265. Q. **And you did not tell your school teacher?** A. No.

266. Q. **Did not tell your mother?** A. No.

267. Q. **Did not tell the Youth and Community Service people?** A. No, only when I ran away.

268. Q. **Only when you ran away?** A. Yes.

Topic change.

269. Q. **Now you said before you did not like your Uncle David, is that not right?** A. Yes.

270. Q. **Do you remember he saved your life? Remember that?** A. Yes.

271. Q. **You are an epileptic are you not Beverley?** A. Yes.

This expression nominalises her condition. She is 'an epileptic' rather than a person who has or suffers from epilepsy.

272. Q. **And sometimes you stop breathing and you have a fit, is that not right, and your father saved your life on one occasion that you know about, or your step-father I mean, I'm sorry.** A. Yes.

"Yes" to what?

273. Q. **And do you support a Rugby League team?** A. Yes.

274. Q. **And is that the same team that your Uncle David supports?** A. Yes.

275. Q. **And he has bought you T-shirts and jumpers in Manly colours has he not?** A. Yes.

276. Q. **And you got on very well with your Uncle David, did you not?** A. Yes.

277. Q. **You are very close to him, were you not?** A. Yes.

278. Q. **True to say that you loved him at one stage?** A. Yes.

279. Q. **And he is hard on the girls is he not, when you were all living together, strict, he is hard on you, is he not?** A. Yes.

There is a chant like quality to this sequence of "nots"

280. Q. **He is very strict? Sorry, do not shake your head or nod because...** A. Yes he is.
281. Q. **He is. And if you do something wrong he punishes you does he not?** A. Yes.
282. Q. **And you admit that you have done things wrong in the past, have you not?** A. Yes.
283. Q. **And he has punished you, is that not right?** A. Yes.
284. Q. **Now did he not punish you for smoking?** A. Yes.
285. Q. **And do you remember when that was?** A. Oh a while ago.
286. Q. **Do you not think it could have been the August holidays this year?** A. ...(inaudible).
287. Q. **You do not think it was the August holidays?** A. No.
288. Q. **Just before you ran away?** A. No.
289. Q. **Do you remember him saying to you "We'll give you the cigarettes, we'll buy your cigarettes for you if you give up all your school outings and your sport", do you remember him saying that?** A. Yes.
290. Q. **And you told him that you did not want to do that you would stop smoking, do you remember that?** A. Yes.
291. Q. **Did that happen in August this year?** A. I don't know.
292. Q. **You do not know. Do you remember how you came to be punished for smoking, do you remember that?** A. Yes, we were made to smoke a cigar.
293. Q. **And do you remember another occasion your father, or your step-father asked you if you were smoking, did you not say no?** A. Yes.
294. Q. **So you told him a lie, did you not?** A. Yes.
295. Q. **And he found you smoking on another occasion, did he not?** A. Yes.
296. Q. **And this was about August this year, or September this year, just before you ran away?** A. I don't know.
297. Q. **Did he not yell at you?** A. Yes.
298. Q. **He was very angry, was he not?** A. Yes.
299. Q. **Did he tell you he was very angry with you because you told him a lie?** A. Yes.
300. Q. **And he shouted at you and told you to go to your room?** A. Yes.
301. Q. **Do you remember that he kicked you in the bottom as you went into your room?** A. Yes.
302. Q. **Now in September of this year just before you ran away do you remember that Uncle David and your mother went to Crowley for the day, do you remember that, and the girls stayed at home?** A. No.
303. Q. **You usually vacuum your room do you not?** A. Yes.
304. Q. **And that is the room you share with Sonia. Do you remember that you hit Sonia on the arm with the steel part of the vacuum cleaner?** A. Yes.
305. Q. **And that hurt Sonia, did it not?** A. Yes.
306. Q. **Were you and Sonia having a fight?** A. Not a real fight we were just, you see Sonia was calling me names and I just hit her with the vacuum cleaner.
307. Q. **What names was she calling you?** A. She was stirring me.
308. Q. **What names was she calling you Beverley?** A. I can't remember the names.
309. Q. **Remember if she was calling you "Iceberg"?** A. What, yes, they used to call me that at Pankhurst High.
310. Q. **See you did not like that, did you?** A. No.
311. Q. **Did Sonia call you that?** A. Yes, and they used to call me another name.
312. Q. **And what was the other name?** A. A two C tunnel cunt.
313. Q. **Two C tunnel cunt.**
314. Q. **Did your Uncle David see Sonia after you had hit her with the vacuum cleaner?** A. Yes.

The use of the passive suggests something did happen and she was the agent. She came to be punished (necessarily) is quite different from someone else punishing her. This is consistent with being a victim.

Note: The following pages are relatively free of comments thus leaving you to make your own.

315. Q. **Sonia was in great pain, was she not?** A. Yes.
316. Q. **She was crying, was she not?** A. Yes.
317. Q. **And your Uncle David told you that he thought you had broken Sonia's arm?** A. Yes.
318. Q. **He was very angry with you, was he not?** A. Yes.
319. Q. **Sent you to your room did he not, again, he yelled at you?** A. Yes.
320. Q. **Shouted at you?** A. Yes.
321. Q. **Do you remember what he said to you?** A. No.
322. Q. **Do you remember him saying to you "Your mother ought to put you in a home where you belong"?** A. Yes.
323. Q. **You remember him saying that to you?** A. Yes.
324. Q. **And that was after the incident with the vacuum cleaner, was it not?** A. Yes.
325. Q. **And you did not want to go to a home, did you?** A. No.
326. Q. **No. You wanted to go back to Crowley?** A. Yes.
327. Q. **And do you know a man called Mr. Kay, Mr. Mark Kay?** A. Yes.
328. Q. **He is the Welfare Supervisor, is he not?** A. Yes.
329. Q. **He had told you that you would be sent to a home, did he not?** A. Oh I can't remember.
330. Q. **And that was about August or September this year. He had spoken to you about stealing, had he not?** A. Oh yes.
331. Q. **Breaking into a lady's house?** A. Yes.
332. Q. **And he told you that you would be sent to a home if you did not behave, did he not?** A. Yes.
333. Q. **Now you were very worried about what your father had said to you, shouted at you, had he not?** A. Yes.
334. Q. **And you were worried that he was going to put you in a home, were you not?** A. Yes.
335. Q. **Now your mother gave you a belting after Uncle David told her about this incident with Sonia, did she not give you a hiding?** A. Yes.
336. Q. **And this was just before you ran away, was it not?** A. I don't know.
337. Q. **A few weeks before you ran away or a few days?** A. I don't really know when I ran away.
338. Q. **You do not remember when you ran away?** A. Yes.
339. Q. **You ran away in September this year, did you not?** A. I think so.
340. Q. **You think so. Do you remember going to see your mother in hospital?** A. Yes.
341. Q. **Do you remember going with Greta and Sonia?** A. Yes.
342. Q. **With the Welfare Officer, the lady Welfare Officer?** A. Yes.
343. Q. **And that was after your mother had been sick, was it not?** A. Yes, after Mum had the baby.
344. Q. **Yes, so it has been in the last two months, has it not?** A. Yes.
345. Q. **Yes. Do you remember Sonia saying to your mother about Uncle David, do you remember Sonia saying something about Uncle David?** A. No.
346. Q. **No?** A. No.
347. Q. **You do not recall Sonia saying "I don't know why I have to he's never done anything to me", did not Sonia say that?** A. No, I didn't go with them to pick up.
348. Q. **Sorry?** A. I didn't go with them to pick up Sonia and them.
349. Q. **I am talking about at the hospital when you went to see your mother?** A. No. She never said nothing like that.
350. Q. **Sonia did not say that?** A. No, I never heard her.
351. Q. **In front, sorry?** A. I never heard her.
352. Q. **You did not hear her. Now after you left home where did you stay?** A. At Felicity Mill's.
353. Q. **I see, and how many days did you spend there?** A. I think a week.
354. Q. **A week?** A. Or so.
355. Q. **And after that where did you go to?** A. I went to the Refuge at Pankhurst.

Note: "Hitting" and "Stealing" are assumed to be actions typifying undesirable behaviour. They are not regarded as symptoms of a condition or as clues to a problem.

356. Q. **Now what happened to Greta and Sonia and Mary, where were they when you were at the Refuge?** A. They were at the Refuge too.

357. Q. **I see, and did Greta and Sonia and Mary share a room with you at the Refuge?** A. Yes.

358. Q. **Did you say, sorry. At the Refuge you and your three sisters used to talk at night, did you not?** A. Yes.

359. Q. **And sometimes you would wait on till you thought Mary had gone to sleep before you would talk, did you not?** A. Yes.

360. Q. **Do you remember saying one night after Mary had gone to sleep, to your two sisters, "if you follow what I'm doing then we'll get rid of him". Do you remember saying that?** A. No.

361. Q. **Did you say that - sorry. I suggest to you that Mary - I withdraw that. If I said to you Beverley that Mary had said that you said "If you follow what I'm doing then we'll get rid of him" what would you say?** A. I never said it.

362. Q. **You say Mary is telling a lie?** A. I didn't say anything like that.

363. Q. **Do you say Mary is telling a lie?** A. No, I don't know what she's saying because I never said.

364. Q. **You do not know whether Mary is telling the truth or telling a lie, do you?** A. No.

365. Q. **So what she could have said could have been the truth, could it not?** A. No.

366. Q. **So it is a lie is it?** A. Yes, 'cause I never said anything like that.

367. Q. **You say Mary is telling a lie do you?**

OBJECTION:

PROSECUTOR:
Well I object Your worship. My friend has put a hypothetical question to the Witness initially, if Mary said certain things.

MR. MANNERS: I do not press the question Your Worship.

368. Q. **Did you go to school at Pankhurst?** A. Yes.

369. Q. **What school did you go to there?** A. Pankhurst High.

370. Q. **I see, and who was your Form Master? Who was your Form Master this year?** A. Mr. ....

371. Q. **Mr. Carlton was it not?** A. Yes.

372. Q. **And he was away for a time this year, was he not?** A. Yes.

373. Q. **Before August of this year, was he not, and you had a Relief Teacher, is that not right?** A. I don't know.

374. Q. **You do not know. You do not remember do you?** A. No.

375. Q. **No. Did you have friends at this school?** A. Yes.

376. Q. **Boyfriends and girlfriends?** A. Yes.

377. Q. **Did you know a boy called Steve Donne?** A. Yes.

378. Q. **And that was this year, you knew Steve Donne this year, he was in your class was he not?** A. Yes.

379. Q. **Do you know what it means to have sex, do you know what that means?** A. No, don't know what it means.

380. Q. **Do you know what it means to have sexual intercourse?** A. I.....

381. Q. **Do you know what that means?** A. I think so.

382. Q. **What do you think that means?** A. When someone forces you to do something.

383. Q. **And did you have sexual intercourse with Steve Donne?**

Beverly's direct involvement ends here. The following dialogue takes place with her present and she is stood down as the legal argument continues. She is brought back two months later.

OBJECTION:

PROSECUTOR: I object Your Worship.

MR. MANNERS: I am going to press the question Your Worship.

PROSECUTOR: Your Worship evidence of prior sexual conduct as regards this Complainant is not admissible in proceedings of this type.

BENCH: Not in that form it is not.

MR. MANNERS: Well Your Worship.

BENCH: It would have to come within the...

MR. MANNERS: Well with, with respect it does because the question is leading up to this in as much as the time framing. It does come within the period.

BENCH: But that has not been, that has not...

MR. MANNERS: Oh well perhaps...

BENCH: Not in the form it is in at the moment.

MR. MANNERS: I thought it was implicit.

BENCH: No, it is just do you know Steve Donne, have you had sexual...

MR. MANNERS: ...with Steve Donne.

MR. MANNERS:

384. Q. **Now this year at Pankhurst High School did you have sexual intercourse with Steve Donne?** A. ....

OBJECTION:

PROSECUTOR: I object Your Worship.

MR. MANNERS: Well Your Worship I press the question.

BENCH: Yes.

PROSECUTOR: Once again, Sir, ...Section 409. Evidence of prior, or evidence which tends to ... indicate or suggest prior sexual behaviour. Sir, is not admissible. the only exemption to that rule, Sir, are basically - of consent. It may be considered by the Court in determining these matters. In respect of the matters now before the Court, Sir consent is not a defence. I suggest that there is a total prohibition in relation to evidence of this nature.

MR. MANNERS: Well if I could take Your Worship to Section 409B. There are many, many exceptions to the admissibility rule. If I can take Your Worship first, to Section 409B sub-section (3) sub-section (f) where it is evidence given by the complainant in cross examination by or on behalf of the Accused person, being evidence given in answer to a question which may refer to sub-section (5) be asked, and its probative value — any distress, humiliation or embarrassment which the Complainant might suffer as a result of the — we could then go to sub-section (5) where it says in prescibed sexual offence proceedings and that in my submission is such proceedings that we are presently dealing with, where the Court or Justice is satisifed that it has been disclosed or applied in the case for the Prosecution against the Accused person that the complainant has or may have during specified period or without reference to any period had sexual experience or lack of sexual experience of a general or specified nature or to have taken part or not taken part in sexual activity of a general or specified nature, and the Accused person might by unfairly prejudiced it the Complainant could not be cross examined by or on behalf of the Accused person in relation to the disclosure of implication. The Complainant may be so cross examined but only in relation to the experience or activity of the nature - so specified during the period, if any, so specified. Now the Prosecution in this case are relating a time frame that goes from sometime in January 1981 - sorry - 1983 up until August 1985. The evidence of Beverley is not conclusive, it is very vague about incidents within that time frame.
The evidence of the doctor must be borne in mind too, in relation to what he said he discovered upon his examination. I am asking my questions in a particular way, where it is, or in such a fashion to minimise any distress, humiliation or otherwise. Which might

be occasioned to Beverley. But it would be my submission that Mr. Brent would be unfairly prejudiced if I could not put questions in relation to any sexual experience Beverley might have had prior to her examination of the doctor, which would fall into the category of those experiences which would result in the findings that the doctor gave before the Court last week. That would be quite, that will tie in with the Doctor's evidence if the answers came out as I expect they will.

BENCH: How would he be unfair.

MR. MANNERS: Pardon?

BENCH: How would he be unfairly prejudiced?

MR. MANNERS: Well, Your Worship is hearing this, these proceedings by way of a committal. In doing that under, pursuant to Section 41 of the Justices Act, it is forcing you to hear the matters and then making, make a decision as Judge and Jury, the inferences being left following the Doctor's examination that the results or his findings, could only have come in the absence of any other evidence from the allegations that have been made against my clients. If I can show to Your Worship, that there are many other instances involving Beverley and Greta, that the Doctor's findings could have come from, then that is a proper matter that Your Worship ought to take into consideration, when considering the matter as Judge and Jury, as Section 41 requires you to.

BENCH: Now, I put it to you this way that not in this particular case. This is, is it not what the heart of the legislation goes to that if a female person complains that some person had sex with anybody on any number of occasions, is not relevant to.

MR. MANNERS: It is not relevant in that particular case, but it is relevant in this particular case.

BENCH: Why?

MR. MANNERS: In as much as the findings of the doctor implicate Mr. Brent at the present, if there are alternatives which would tend to not implicate those Doctors findings with Mr. Brent, then for that evidence not to come out, he would be severely prejudiced.

BENCH: How in this case does, other than the...

MR. MANNERS: Well perhaps...

BENCH: ...the medical findings disregarding what he was told by the Complainants, how apart from his medical findings, is that different in this situation?

MR. MARSHALL: Well perhaps I could continue with what I wish to say to Your Worship in the absence of the witness.

BENCH: Yes.

MR. MANNERS: Because then I can make it...

BENCH: Beverley, do you mind waiting outside for a moment while we have...A. Yes.

(Witness stood down) 13/12/85

(Beverly Brent, Re-sworn, examined as under) 23/2/86

385. Q. **Beverley when was the first time that you told anybody that your step-father had been interfering with you?** A. That was down at Crowley.

386. Q. **And who did you tell at Crowley?** A. Rachel and Chloe.

387. Q. **And they are your cousins?** A. Yes.

388. Q. **And did you tell your sisters?** A. Yes.

389. Q. **When did you tell your sisters?** A. They already knew.

390. Q. **When did they know?** A. I don't know.

391. Q. **Was it at Crowley that they knew?** A. I don't know.

392. Q. **Or was it at Horsley?** A. I think at Horsley.
393. Q. **So they did not know in Crowley, they knew in Horsley?** A. Yes.
394. Q. **And did you speak to, this is Sonia and Greta, is this right?** A. Yes.
395. Q. **And did you speak to either Sonia or Greta about what your step-father had been doing to you?** A. Yes.
396. Q. **And where did you speak, was that at Horsley?** A. Yes.
397. Q. **And what did you say to Greta?** A. Well I just told her what was going on.
398. Q. **And what was going on?** A. About what Uncle David was doing.
399. Q. **And did you speak to Sonia?** A. No she was speaking to me..
400. Q. **And what about, you say you told Greta, now did you tell Sonia?** A. Yes.
401. Q. **And what did you tell Sonia?** A. Just what happened.
402. Q. **And that was at Horsley?** A. Yes.
403. Q. **And that was the first time you had spoken to Greta and Sonia about what was happening between you and Uncle David?** A. Yes.
404. Q. **In Crowley you shared a room, did you not?** A. Yes.
405. Q. **Who did you share a room with?** A. Sonia I think.
406. Q. **And do you remember Uncle David had two jobs at that time?** A. Yes, he was on the, driving taxis and he was on the silos.

Question markers plus "and"s create tone of affirmation and dialogue.

407. Q. **He worked at the silos during the day and drove the taxis at night, is that not right?** A. Yes.
408. Q. **And when do you say he interferred with you at Crowley?** A. At night 'cause he didn't work every night.
409. Q. **And where was Sonia on this particular evening?** A. I don't know.
410. Q. **You were the only person at home, were you?** A. No.
411. Q. **Who else was at home?** A. Greta, Mary and Sonia.
412. Q. **And they were at home when your father first interfered with you?** A. Yes.
413. Q. **Your step-father that is?** A. Yes.
414. Q. **Did you not scream out?** A. Yes.
415. Q. **And the first time that you spoke to Sonia or Greta about this was two years later at Horsley?** A. Yes.
416. Q. **Did you tell your mother?** A. No.

Is this strange in patterns of disclosure?

417. Q. **Did you ever tell your mother?** A. Yes I told Mum.
418. Q. **When did you tell your mother?** A. I can't remember when I told her, but we told Mum.
419. Q. **Did you say "we told mum", who is "we"?** A. Yes, Me. Sonia and Greta.
420. Q. **All three of you at the same time?** A. Yes.
421. Q. **And when was that? Was that at Horsley?** A. Yes.
422. Q. **Was that in August this year, or last year, sorry. Just before you left?** A. I think so.
423. Q. **You think so. Are you not sure?** A. No.

This starts a new pattern of questioning.

424. Q. **What did you tell your mother?** A. We just told Mum that Uncle David was being rude to us.
425. Q. **Being rude to you, is that all you said?** A. Yes, that's what I said.
426. Q. **And what did Sonia say?** A. She told Mum that he was being, that he was being rude to her.
427. Q. **What did Greta say?** A. I don't know.

1. The examiner repeats her uncertainty and elicits an "I don't know" response.

428. Q. **You do not know?** A. No.
429. Q. **And what did your mother say?** A. Mum said no.
430. Q. **She said no?** A. Yes.
431. Q. **Is that all she said?** A. She said no it didn't happen.
432. Q. **Now you recall the day that you left Horsley, left home as it were, do you remember that?** A. Yes.
433. Q. **When you packed some things to take to School?** A. Yes.
434. Q. **Do you remember saying to your brother on that day, do you remember speaking to Stewart on that day?** A. Yes.

2. He asks her questions in terms of remembering.

435. Q. **Do you remember saying about your Uncle David "I'm going to get rid of him and I know just how to do it", remember saying that?** A. No, no.

436. Q. **Do you say you did not say it?** A. Yes.
437. Q. **When you were at Crowley your mother usually put you to bed did she not?** A. Yes.
438. Q. **And as she put you to bed she usually stayed in the house, did she not?** A. Sometimes she used to, she would go down and see Aunty Margaret for a while.
439. Q. **But that was only two houses away, was it not?** A. No.
440. Q. **And she would not go down and see your Aunty Margaret very often at night, would she, after you had gone to bed?** A. Not very often.
441. Q. **Not very often. Your Uncle David did he say anything to you on any of the occasions that he interfered with you, do you recall that he said anything to you?** A. Yes he said something but I don't remember.
442. Q. **Do you recall him saying "I'm teaching you to do, what to do to please men when you grow up?"** A. Yes.
443. Q. **Do you remember when he said that?** A. Yes.
444. Q. **When?** A. We were sitting on the lounge.
445. Q. **Was that at Crowley or Horsley?** A. Horsley.
446. Q. **That was at Horsley. That was the only thing he said to you?** A. Yes.
447. Q. **Either at Crowley or at Horsley?** A. No he said something else too.
448. Q. **What else did he say?** A. He said something about if I tell anyone I'll get into trouble.
449. Q. **Was that at Crowley or at Horsley?** A. Horsley.
450. Q. **So he did not say anything to you at Crowley?** A. No.
451. Q. **Did you see your Uncle David interfering with Greta?** A. Yes.
452. Q. **What did you see?** A. I saw Uncle David on Greta.
453. Q. **Sorry?** A. I saw Uncle David on Greta.
454. Q. **On top of Greta?** A. Yes.
455. Q. **And when was this?** A. It was in Horsley when I went to tell him that Sonia was sick.
456. Q. **And it was in his bedroom was it?** A. Yes.
457. Q. **Do you remember what time of the year this was at?** A. No.
458. Q. **Do you remember whether it was winter or summer?** A. No.
459. Q. **Do you remember whether it was 1985?** A. Yes.
460. Q. **It was in 1985. Do you remember if it was shortly before you left Horsley or was it a long time before you left Horsley?** A. I can't remember.
461. Q. **Did you speak to Greta after this incident?** A. No.
462. Q. **Greta did not say anything to your mother in your presence about this particular incident, did she?** A. No.
463. Q. **And you did not tell your mother, you did not tell your mother specifically or in detail what you say Uncle David had been doing to you, did you?** A. No, not specific.
464. Q. **Do you remember being at the Pankhurst Youth Refuge?** A. Yes.
465. Q. **With your Aunt Margaret?** A. Yes.
466. Q. **And do you remember Greta saying "We're not allowed to talk about it", referring to your Uncle David?** A. Yes.
467. Q. **Do you remember Sonia saying that he has done nothing to me?** A. Yes.
468. Q. **Do you remember then saying to Sonia "Shut up"?** A. No.
469. Q. **Do you remember telling Sonia and Greta "Just follow me and I'll get you out of this mess"?** A. No.
470. Q. **You visited your mother in hospital with your Aunty Grace, did you not?** A. Yes.
471. Q. **Do you remember Sonia saying to your mother "I don't know what I'm doing mixed up in this", or words to that effect?** A. Yes.
472. Q. **It is correct to say that Sonia looks up to you, follows your example, does she not?** A. Yes.
473. Q. **And you are a stronger girl than Sonia?** A. Yes.
474. Q. **You are cleverer, more clever than Sonia?** A. Yes.

3. He uses the negative statement as a question.

4. He does not acknowledge her modification.

5. The time frame is not clear.

6. He uses formal phrasing and expression.

7. Propositions are embedded in the question.

8. He characterises her behaviour as manipulative.

475. **Q.** **And she accepts what you say, is that not right?** A. Yes.
476. **Q.** **Did you go swimming with Sonia one day at the river near Horsley? Last year?** A. No I don't remember.
477. **Q.** **With Nick Curtis?** A. No we never went swimming.
478. **Q.** **You do not remember Sonia taking her clothes off?** A. No.

(Witness retired and excused)

"Clinical experience and expert testimony can provide advocacy for the child. Children are easily ashamed and intimidated both by their helplessness and by their inability to communicate their feelings to uncomprehending adults. They need an adult clinical advocate to translate the child's world into an adult-acceptable language".
(Summit, 1983)

5 SETTLING THE QUESTION OUT OF COURT

In spite of the fact that many workers in the field do not have the tools of linguistic analysis available to them which would make the task of describing the strange language of court a lot easier, they are nevertheless able to cite examples of the inappropriate use of language with child victim witnesses. Their concerns for the alleged victims of child sexual abuse are partially based on their own reactions and partially on the need to pick up the pieces of a child's life after successive court appearances.

A child protection officer offered the following example of her frustration at the treatment of a child under her care. The cross examining lawyer persisted, in her view, with a line of questioning phrased in strange language which was outside the capacity of the child.

"He kept asking her for dates, and dates before the 11th of November. The 11th of November meant nothing to her. If he'd said after your birthday, which was the 4th of November she might have had a chance. Now, she knows when her birthday is. If he'd asked 'After your birthday did something happen to you?' She would have said 'Yes'. But he just kept on saying 'before the 11th of November.' Well the 11th of November meant nothing to her, but he just kept on asking the questions."

Another child protection officer described how a child could recount the details of his assault in one context, with the help of anatomically correct dolls. When the child was confronted with questions during cross examination which contained highly technical terms for the sexual organs he became disoriented, distressed and he was unable to answer. "He took the bottom half of the doll's clothes off and was quite fascinated with the penis, and he medically showed us what happened...and yet if you asked him a question like 'How far did he insert his penis into your anal area', the child would just go 'Huh'."

Similar questions asked of children during cross examination about the fine anatomical details of their assault represent, in the minds of those concerned with the welfare of child victim witnesses, unfair presuppositions about the language and emotional capacities of children. The reiterations and repetitions of questions with subtly altered language components confuse and degrade the child witness.

A number of people intimately concerned with the welfare of child witnesses articulated a widespread dissatisfaction with the architecture and physical organisation of the courtroom. Before any words have been spoken the child is confronted with an environment which is alien, unfriendly, oversized and threatening.

"They go into a large gloomy building set up with archaic furniture and monopolised by men, to answer a case that invariably involves men. And unless steps are taken to allay those fears it is very difficult for them to tell a story that involves highly intimate sexual details."

The anxieties expressed above highlight some of the problems associated with the cross examination of child victims of sexual assault. Strange language,

strange architecture and strange people dominate the context into which the child is admitted. Individuals charged with the care of child victims are understandably disturbed by the effects which courtrooms and their contexts have on these children. Language is used to exclude the world of the child in cases which are all about children.

The problem becomes one of how to describe and display the distance between the child's language capacities and the language of the courtroom, a distance, which during cross examination of the child victim witness, inevitably becomes most pronounced. In order to display this distance a testing programme, using children unconnected with court, was created. These children were asked to repeat a variety of questions.

The basic premise of the test is that if a person can repeat a piece of language (text) then the language, its structure, vocabulary and length are manageable and within the linguistic repertoire of the respondent. If they fail to repeat the text it is assumed that there is a mismatch between the speaker and the listener. It is a rare situation to find complete understanding existing between speakers and listeners. However, in the courtroom this difference becomes a critical problem particularly when children are involved as witnesses. The language used is based on adult perceptions of how language can be used and makes little or no reference to the developmental and linguistic characteristics of the person being cross examined. Indeed it often appears that this language barrier is being exploited for the benefit of the defendant rather than safeguarding the ways in which children can best express their knowledge and understanding of what has happened to them.

Court language is a world on its own where the normal conventions of communication have become subservient to a set of procedures which have established themselves over generations. These conventions; the fact that the person examining the child frequently faces the bench whilst questioning the child; that questions are interrupted by procedural objections; that discussions of what the child has been asked and how that child has replied are discussed at length while the child remains present; and that the alleged offender sits in a special place whilst all this is going on and frequently says nothing, must at best appear foreign to the child. At worst they are intimidating and confusing. The rules for language usage determine the interactions that occur between people. To a child these conventions must appear like finding themselves in the middle of an incomprehensible film script. People dressed in gowns and wigs, totally formal speech, people who sit and look blank for hours at a time, all overseen by a person to whom everyone defers for advice, guidance and resolution of disagreements on points of law. Within such a prescriptive environment language and the movement of the actors are the only variables. The environment is tightly managed and within this context the scope for responding is very limited. The child witness has to cope with these limitations and translate the formalities of the environment into linguistic terms in order to deal with the language of the courtroom. The child is expected to respond in a precise and prescribed manner, and upon these responses his or her veracity is assessed.

The child has little room for negotiation or manouevre. This situation is totally alien to the child's previous experience of language where words have been used to learn about, explore, test and generally establish relationships with the rest of the world. This rapid change in the use of language confronts child witnesses and they can quickly become the victims of a set of language rules which prohibit them from expressing themselves in a meaningful and truthful way. They are not permitted to tell their story in their own words and the restrictive questioning format frequently frustrates and confuses the child victim. The courtroom context and the language in particular reinforces quickly in the child's mind their role as the victim in the proceedings and members of the court do little to contradict this.

Language is the medium of exchange in the courtroom. It is steeped in tradition and some of these traditions are quite outside the normal language repertoire of both adults and children. It is useful to identify some of the linguistic features which are peculiar to the courtroom. For this purpose a testing programme assessing children's ability to hear different questions was set up.

The repetition mode is the basis of the test and is used to observe how children handle a range of court, school and counselling questions with the idea in mind that if they could repeat a question accurately then both the language of the question and the length of the question were matched appropriately with the child's level of language development. Then and only then, could they make an attempt to answer the question. The testing programme made no judgements about context, stress or victimisation. These aspects of the issue are considered separately. It was an objective assessment of whether these questions and their language were part of the child's repertoire. The children were not required to answer the questions but simply repeat them. To understand and then respond to a question presupposes that the language of the question is part of the language repertoire of

the listener. Repertoire is a concept which includes both the syntax and semantics of language. Syntax is a concept which embodies the principles of order which govern our language. It is a set of rules which develops and refines with age and allows us to communicate with other people. Words are not randomly combined. Their choice is patterned by unstated rules. Grammars are only one attempt to describe the complex interrelationships between different word classes. All these rules are gradually absorbed without direct instruction and appear as the guideposts for effective communication and language. If certain syntax is not part of the repertoire of the listener then answering that question becomes a problem. For example if someone asked the question: "Where were you today?" in an unfamiliar syntactic form such as: "Were today you where?", it would be difficult to respond because the unfamiliar syntax interferes with the meaning for which you are searching. Also if the question was: "Where were tot niigelster?" the listener would experience a lot of difficulty in responding because the words "tot" and "niigelster" are not part of the listener's semantic repertoire. He cannot attribute sensible meanings to the words. Syntactic and semantic mismatches between questioner and respondent are frequent in court. The following is a partial description of the mismatch, and reports through display, the source of the problem and therefore the source of possible solutions.

The aim of this part of the study is to investigate the difference between the language repertoire of the child and the language repertoire demanded by the courtroom in cases of child sexual assault.

TESTING PROGRAMME

Transcripts obtained from the Sydney and Wagga offices of the Department of Public Prosecutions were catalogued according to the age of the child witness. There were 26 such transcripts collected in which children between six years and fifteen years of age gave evidence under cross examination. The majority of these transcripts were a record of Committal Proceedings, where transcripts had been made because the case was to proceed to the District Court level. In two instances transcripts which followed cases from the Magistrates Court to the Court of Appeal were also used. The youngest child cross examinated was six years old and the oldest was fifteen. A table of the number of transcripts collected appears below

AGE	TRANSCRIPTS
6	1
7	2
8	2
9	3
10	3
11	3
12	2
13	4
14	4
15	2
	26

From these 26 transcripts a list was compiled of 5,654 questions asked during the cross examinations of child witnesses.

The transcript questions for each age group were then combined and numbered sequentially. The age grouping allowed matching with the ages of the children tested, and also offered the opportunity to observe any differences in questioning style which many magistrates and lawyers claim to make as concessions to the language maturity of child witnesses.

Questions for each age group were also obtained from the counselling profession. These were representative of the kinds of questions used when interviewing children and collecting evidence from them. Typical classroom questions, the kinds that teachers ask, were also collected for each age group. The bulk of questions which the children in the testing programme were asked to repeat were taken from actual court cases. However, it was decided to include the extra two categories of questions, **"Counsellor"** and **"Teacher"**, to provide contrast rather than experimental control. The five **"Counsellor"** questions for each age are specifically related to interview procedures for alleged victims of child sexual assault. Five questions appropriate to classrooms in which children of different age groups would find themselves were also collected. These questions show that different contexts and different reasons for asking questions exist and that information can be obtained from children by asking questions in different ways.

TRANSCRIPT QUESTIONS

Two different criteria were used to select questions from the transcript material available, thus creating two different sets of questions for repetition. One was arrived at by using random numbers. These are referred to as "Random Lawyer" questions. The other set was created by selecting from the transcripts questions which, for a variety of reasons, we thought might cause difficulty for the listener. These are referred to as "Selective Lawyer" questions.

RANDOM LAWYER QUESTIONS

To ensure that a representative sample of questions was chosen a set of random numbers was used to find 20 questions from the total pool of questions for each age group of children. Each of the questions in the transcripts were numbered and then a set of random numbers was used to select 20 questions for each age group of children.

SELECTIVE LAWYER QUESTIONS

Having read all the transcripts a number of times it became obvious that there were a number of hard to answer questions. A list of question types and lengths was developed and this formed the basis for the selection. These questions contained examples of court language and court style which are often confusing to the most competent of language users. These questions encapsulated and reflected some of the predominant linguistic concerns which we have for children trying to come to terms with the language of the courtroom. These linguistic concerns are based on the assumption that for communication and information exchange to be effective there must be an adequate match between the language used by both conversational partners. If the gap between the two participants is widened by unclear speech, peculiar structure and unfamiliar vocabulary then one party to the conversation is disenfranchised from the process of effective understanding. They will fail to make sense. The concern with children under cross examination is predicated on the belief that if the language used in court is ill matched with the witnesses' language capacities, their rights as language users are not being acknowledged or respected. The techniques which exacerbate this distance are described in detail in later chapters. The questions for repetition in the **"Selective Lawyer"** group were chosen on the basis of the categories which contributed most to this apparent mismatch. The categories were developed from the transcripts rather than from any previously developed list or taxonomy.

For each age group of children twenty randomly chosen transcript questions were listed and twenty selectively chosen transcript questions were also listed. Five classroom questions and five counsellor questions were also added to each pool and together, when randomly mixed, became the sets of questions which the children were asked to repeat.

Repetition of questions was the method used to determine whether the language of the questions asked was part of the language repertoire of the child. The theory and format for this methodology are based on the work of Marie Clay whose "Record of Oral Language" uses a repetition model to "....observe aspects of a child's control over oral language and assess a child's ability to handle selected grammatical structures..." (Clay, 1976).

"One way to find out how much of the structure of adult speech a child has learned is to ask him to listen to a sentence and to repeat it. By having a child repeat sentences which represent a wide range of syntactic structures in English a teacher can learn as much in a relatively short time about his control of those structures as would be learned from listening to the child's spontaneous speech over a much longer period." (Clay, 1976)

The premise which underlies the work of Marie Clay is that what is not reproduced accurately is not heard; what is reproduced accurately is heard; and there are variations in between. The factors which influence what is heard are multitudinous and as Marie Clay states, "No single linguistic criterion has been devised for predicting reliably the difficulty of sentences...There are many factors which influence the difficulty of any sentence. An unusual word or ambiguity of meaning could easily cause an increase in difficulty greater than that produced by a change in grammatical structure or an increase in sentence length. The most reliable guide to difficulty is the nature of the child's response." (Clay, 1976)

In this sense the poles of the assessment, totally accurate reproduction and nil reproduction, are self evident. **Totally accurate** repetitions by the child indicated a total control over the language structures and vocabulary contained in any given question. **Nil reproductions** indicated that for whatever reason the child did not have the capacity to hear and repeat the questions, and as such the question was outside their language repertoire. However, we wanted to take into account, and find out about, the fractures or breaks which occured as the hearer struggled to recreate what they had heard. We decided that single element changes should be classifed differently to multiple element changes. Some children imposed their own sense on questions which they found difficult to repeat. Others maintained partial sense when repeating. While others simply regurgitated nonsensical strings of words. This analysis of departures from the text of the original questions was developed in terms of the fractures which children made to the flow of language of the question. These fractures could be isolated firstly in terms of whether, within any one given question, there was only one such fracture, or whether a number of these occured. In the testing profile these become **Single Element** or **Multiple Element** changes respectively.

To make these points clearer and to give the reader a greater appreciation of the dimensions of this study, a testing profile for James aged 11 years, has been

included at the end of this chapter. All subsequent examples are taken from this profile.

For example, James fractured question eleven in the "Selective Lawyer" class. The original question was: "Well, you are not sure whether you said those things to the Principal which are wrong?"James only changed one element of this question when he repeated:

"Well you are not sure THAT you said those things to the Principal which are wrong?"

This fracture type was called a single element change to the original question because only one unit of the question had been changed in repetition.

Multiple element fractures occured when a number of elements within the original question were changed by the child during repetition. For example, question thirteen in the "Selective Lawyer" class was:

"All right, so between his patting you and his attempt or his trying to put his squash racquet in your bag there was nothing else, is that right?"

James repeated the question in the following way"

"As you attempt trying to put his squash racquet in your bag there nothing else was there?" Within the repetition made by James there were seven fractures to the original question. These were: four omissions "all right", "so between his patting", "and his" "or his", one addition "as" two substitutions "is" for "was", "was there" for "is that right".

This represents a multiple element change to the original question. For the purposes of this analysis an element within a question was defined as being a chunk of language which could stand on its own and maintain some sense in isolation and without context. The task of analysing each individual word change within a question made by a child during repetition would be enormous and not necessarily either productive or appropriate. Language is stored and dealt with in chunks. Some pieces of language naturally occur together given the rules of syntax governing the structure of our language. These naturally occuring chunks were taken as the elements which combined to form the questions offered for repetition. In those cases where only one word was changed, these were also regarded as elements. Looking back at the example of James, repetition one shows James substituting the element "that" for the element "whether". This is a single element change consiting of only one word. A single element change consisting of more than one word is exemplified below. Question sixteen in the "Selective Lawyer" class reads: "This terrible thing happening to you, if there was someone else there you'd remember it wouldn't you?" James repeated the question in the following way:

"This terrible thing happening (Omitted "to you"), if there was someone else there you'd remember it wouldn't you?"

The omission of "to you" is regarded as a single element, a single chunk of language that stands together as an utterance.

The decisions made thus far would have produced an extensive set of only quantitative data. These would have been expressed in terms of numbers and extents of fractures, as single and multiple element changes. Descriptive labels could also be attached, namely omissions, additions, substitutions, transpositions and reconstructions.

In order to come closer to a qualitative appreciation of what was going on between what was said and what was heard, the fractures were viewed in terms of how extensively they distorted the form and content of the original question. This assessment was expressed in terms of **syntactic** and/or **semantic** dislocation. In most cases it is unwise to distinguish between the form and content of a piece of language, as a change in one necessarily occasions a change of some sort in the overall meaning, and thus the other. However, there are occasions when one word is substituted for another (semantic) and the overall structure (syntax) is left intact.

The following example illustrates how devastating such a change can be. The single element change maintains the structure and maintains sense but the meaning of the original question has changed.

Original Question: "Would it be incorrect to suggest that it was not so much a tripping, but because of the state of inebriation of yourself that you fell over?"

Repetition: "Would it be correct to suggest that it was not so much a tripping over, but because of the state of inebriation of yourself, that you fell over?" (Transcript 13 years)

With this accumulation of qualitative, descriptive and quantitative data each incorrect response was then placed alongside the original text to see how far the reproduction reflected the sense of the original. "THE SENSE" occured when the sense of the repeated question totally reflected the sense of the original. These samples of James's repetition demonstrate this. Original Questions. "Well you are not sure whether you said those things to the Principal which are wrong?"

Repetition: "Well you are not sure that you said those things to the Principal which are wrong?

"A SENSE" occured when the repeated question made sense but not the actual sense of the original. For example:

Child _____ Age _____ Question Class _____

						No. in Class	% of Class of Reproduction
1. TOTAL REPRODUCTION Q. Nos. ___ ___ ___ ___ ___ ___ ___ ___ ___ →						Total Sense	
2. SINGLE ELEMENT CHANGE Q. Nos ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___	Omission		Syntactic Dislocation	Yes	No	The Sense	
	Addition					A Sense	
	Substitution		Semantic Dislocation			No Sense	
	Transposition						
3. MULTIPLE ELEMENT CHANGE Q. Nos ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___	Omission		Syntactic Dislocation			The Sense	
	Addition					A Sense	
	Substitution		Semantic Dislocation			No Sense	
	Transposition						
	Reconstruction						
4. NIL REPRODUCTION Q. Nos. ___ ___ ___ ___ ___ ___ →						No Sense	

NOTES:

Original Question: "Well on the week before you made this statement to the Principal you said that one night you were in the kitchen?"

Repetition: "Before you made this statement to the Principal you said that you were in the kitchen the night before?"

"NO SENSE" occured when neither the actual sense of the original, nor another sensible expression was repeated. When read alone the repetition was nonsense. For example:

Original Question: "You went for a swim there, I am putting to you, at Cronulla Beach?"

Repetition: "You went for a swim there you put at Cronulla Beach?

The coding format developed to collate and display all the types of data collected, appears on the previous page.

SELECTION OF CHILDREN IN THE TESTING PROGRAMME

Three schools in Wagga participated in this testing programme: one male high school, one female high school and a co-educational primary school. The teachers were asked to select three children in each age group according to their perceived language abilities: one above average, one average and one below average language user in each age category. We thus obtained a representative range of general language abilities from a cross section of three schools.

TESTING PROCEDURE

Each child was introduced to the testing format individually. The purpose of the study was explained in terms of the researcher wanting to find out more about different questions children are asked. The whole exercise was not presented as a test and it was made quite clear to the children involved that inability to repeat questions or to match the original questions perfectly must not be construed as failure. The researcher gave a number of practice questions for each child to repeat so that the child felt comfortable with the format before the test items were administered. As far as possible the test situation was relaxed and informal with the researcher making sure that the child was comfortable and at ease before beginning. In particular, the younger children were tested within the security of the library and the children and the researcher were seated at the same level in an informal way.

After the researcher was satisfied that the child understood the procedure the testing began. The child was asked to repeat the questions. The questions from each category were mixed so that a sequence of different types of questions was presented. The researcher took care to enunciate the questions clearly and slowly. Intonation and speed of articulation were held as constant as possible across all questions. After the child had attempted to repeat all the questions the child was asked to comment on those questions which they found both difficult and easy to repeat. Each testing session was tape recorded to avoid the necessity for intrusive note taking and to allow full attention to be given to the child and to ensure that the concentration of the child was maintained.

The tape recorded sessions with each child were then used to mark the differences between the repetitions and the original questions. These were scored in terms of fractures and their types. These were then coded onto the data display sheet for each child. For each of the thirty children these analyses were organised according to the categories of questions offered for repetition.

If we return to James as an example we can appreciate how one child dealt with questions of different complexities and lengths.

SELECTIVE LAWYER QUESTIONS

Within the "Selective Lawyer" group of questions James did not accurately reproduce any of the original pieces of text. Therefore his score in the **'total reproduction'** category was zero.

James altered two questions by single element changes. One of these changes was an omission and one was a substitution. Both these changes resulted in James generating syntactically and semantically whole pieces of language and while these changes did not produce "THE SENSE" of the original question they resulted in "A SENSE". He altered the questions but his alterations maintained a language form as well as a discernible meaning. As a percentage of the total number of "Selective Lawyer" questions offered for repetition, the two single element changes which James made, preserved "A SENSE" in 10% of the cases. James changed multiple elements within four questions. He omitted fifteen elements, added two elements, substituted eight elements and transposed one element. These changes resulted in an even division between syntactically and semantically dislocated pieces of language, with half of his reproductions being unlike normal language.

As a result of these dislocations James produced two reproductions which had "A SENSE" of

language, and two which had "NO SENSE" of language. Therefore, the multiple element changes which James made to four questions resulted in 10% maintaining a "A SENSE" of language (as a proportion of the total number of questions within the "Selective Lawyer" category) and 10% having "NO SENSE" of language. James failed to attempt any reproduction of fourteen out of the twenty "Selective Lawyer" questions. Therefore 70% of the total number of questions offered for repetition had "NO SENSE" for James.

RANDOM LAWYER QUESTIONS

Within this category of questions James accurately reproduced eight questions, 40% of the total number of questions offered for repetition within this category.

None of the changes that he made were single element changes and four shifts in repetition contained multiple element changes. These multiple element changes consisted of eleven omissions, one substitution and one transposition. Within three of these questions the multiple element changes which James made resulted in syntactically and semantically dislocated pieces of language. Therefore only one out of the four repetitions in this category had "A SENSE" of language and three contained "NO SENSE" of language. As a percentage of the total number of questions offered for repetition in this category of "Random Lawyer" questions, James preserved "A SENSE" in 5% of the cases, and "NO SENSE" in 15% of the cases. James failed to attempt repetition of eight questions. Therefore a total of 40% of the questions had "NO SENSE" for James.

TEACHER QUESTIONS

Within this group of questions James accurately reproduced three out of the five questions and therefore maintained "THE SENSE" in 60% of the questions offered. The remaining two questions were altered on a multiple element basis with three omissions, one addition and three substitutions. Both questions which were altered in this way resulted in syntactically and semantically acceptable pieces of whole language. One of these questions preserved "THE SENSE" of the original question and one preserved "A SENSE". As a percentage of the total number of questions offered for repetition the multiple element changes resulted in the maintenance of "THE SENSE" in 20% of cases and "A SENSE" in 20% of cases.

COUNSELLOR QUESTIONS

James accurately reproduced all the questions within this category thereby maintaining total sense in 100% of cases.

The above description of how James handled questions of different types is now a profile which can be presented and analysed in different ways. If we use the format discussed by Marie Clay only totally accurate reproductions should be scored as reflecting those language structures with which the child is comfortable. If this division is adopted the profile appears as:

QUESTION CLASS	TOTALLY ACCURATE REPRODUCTIONS
Counsellor	100%
Teacher	60%
Random Lawyer	40%
Selective Lawyer	0%

If we accept that ability to repeat questions is an accurate reflection of the synonymy between the language of the question and the language repertoire of the child then the counsellor questions are perfectly matched, the teacher questions matched in 60% of cases, the random lawyer questions matched in 40% of cases and the selective lawyer questions are completely outside James's language repertoire.

However, this level of analysis has been further refined to admit other dimensions of language ability. By analysing the types of repetition shifts which James makes according to the criteria described earlier, it is possible to observe how James deals with questions considered by the court to be suitable to his age but which are nevertheless outside his normal language repertoire.

Within the SELECTIVE LAWYER class 70% of the questions are so ill matched that he makes no attempt to repeat them. 30% of the questions offered for repetition are changed, two thirds of these have "A SENSE" of language, and one third has "NO SENSE".

Within the RANDOM LAWYER selection of questions 40% preserved "THE SENSE" of the original question, 5% had "A SENSE" of language and 55% had "NO SENSE" of language.

Within the TEACHER grouping 80% preserved the total sense of the original question and 20% had an independent "A SENSE".

The COUNSELLOR QUESTIONS produced total sense in all cases.

An analysis identical to the one just outlined above was carried out for each of the 30 children involved in the testing programme and an overall profile of the results appears below. A more detailed graphical display is presented and summarised in the next chapter.

SELECTIVE LAWYER

	AGE	15	14	13	12	11	10	9	8	7	6
THE SENSE	TOTAL REPRODUCTION	10	2	10	0	0	17	12	15	8	50
	SINGLE ELEMENT	0	3	10	2	0	3	2	2	3	0
	MULTIPLE ELEMENT	2	2	13	2	0	0	2	3	3	0
A SENSE	SINGLE ELEMENT	5	5	0	5	3	5	0	0	5	7
	MULTIPLE ELEMENT	27	27	40	52	15	27	37	27	20	23
NO SENSE	SINGLE ELEMENT	0	0	0	2	0	0	0	2	0	3
	MULTIPLE ELEMENT	22	12	10	12	7	13	30	5	17	10
	NIL REPRODUCTION	34	61	17	25	75	35	17	46	44	7

COUNSELLOR

	AGE	15	14	13	12	11	10	9	8	7	6
THE SENSE	TOTAL REPRODUCTION	100	100	93	100	93	100	100	100	87	100
	SINGLE ELEMENT	0	0	7	0	7	0	0	0	7	0
	MULTIPLE ELEMENT	0	0	0	0	0	0	0	0	0	0
A SENSE	SINGLE ELEMENT	0	0	0	0	0	0	0	0	0	0
	MULTIPLE ELEMENT	0	0	0	0	0	0	0	0	0	0
NO SENSE	SINGLE ELEMENT	0	0	0	0	0	0	0	0	0	0
	MULTIPLE ELEMENT	0	0	0	0	0	0	0	0	0	0
	NIL REPRODUCTION	0	0	0	0	0	0	0	0	6	0

TEACHER

	AGE	15	14	13	12	11	10	9	8	7	6
THE SENSE	TOTAL REPRODUCTION	60	66	66	87	59	79	73	100	73	73
	SINGLE ELEMENT	13	13	13	7	7	7	7	0	0	20
	MULTIPLE ELEMENT	0	7	7	6	7	0	0	0	7	0
A SENSE	SINGLE ELEMENT	13	7	0	0	0	7	7	0	13	7
	MULTIPLE ELEMENT	7	0	0	0	27	0	6	0	7	0
NO SENSE	SINGLE ELEMENT	0	7	7	0	0	7	7	0	0	0
	MULTIPLE ELEMENT	7	0	7	0	0	0	0	0	0	0
	NIL REPRODUCTION	0	0	0	0	0	0	0	0	0	0

RANDOM LAWYER

	AGE	15	14	13	12	11	10	9	8	7	6
THE SENSE	TOTAL REPRODUCTION	65	50	70	72	48	37	44	42	43	80
	SINGLE ELEMENT	3	5	12	8	2	10	7	10	8	10
	MULTIPLE ELEMENT	3	0	3	0	2	3	0	3	0	0
A SENSE	SINGLE ELEMENT	0	12	0	2	0	3	7	1	0	10
	MULTIPLE ELEMENT	10	15	8	10	12	17	20	17	2	0
NO SENSE	SINGLE ELEMENT	0	2	0	2	2	5	2	0	0	0
	MULTIPLE ELEMENT	7	8	2	3	8	13	10	7	4	0
	NIL REPRODUCTION	12	8	5	3	26	12	10	20	43	0

From these profiles organised according to the age of the children tested we can draw some conclusions. If we first look at those repetitions which preserved "THE SENSE" of the original question, a continuum of question difficulty can be drawn up which reflects the synonymy between the language of the questions and the language abilities of the children tested.

1. The language of the counsellor group of questions most closely paralleled the language abilities of the children. They are thus more likely to be answerable because the questions themselves are accessible to the children.
2. The language of the teacher generated questions is ranked next in terms of the match between the language of the questions and the language repertoire of the child with the exception of the six year old age group.
3. Questions chosen from the transcripts using random numbers, the random lawyer questions, appear next in the continuum.
4. Selective lawyer questions showed the greatest mismatch between the language of the child and the language of the question. The following tables display the figures to substantiate these statements.

PERCENTAGE WHICH PRESERVED THE SENSE OF THE ORIGINAL QUESTIONS

AGE	COUNSELLOR	TEACHER	RANDOM LAWYER	SELECTIVE LAWYER
15	100	73	71	12
14	100	86	55	7
13	100	86	85	33
12	100	100	80	4
11	100	73	52	0
10	100	86	50	20
9	100	80	51	16
8	100	100	55	20
7	94	80	51	14
6	100	93	90	50

PERCENTAGE WHICH PRESERVED NO SENSE OF THE ORIGINAL QUESTION

AGE	COUNSELLOR	TEACHER	RANDOM LAWYER	SELECTIVE LAWYER
15	0	7	19	56
14	0	7	18	73
13	0	14	7	27
12	0	0	8	39
11	0	0	36	82
10	0	7	30	48
9	0	7	22	47
8	0	0	27	53
7	6	0	47	61
6	0	0	0	20

It is clear that the ranking of the questions in terms of ease of repetition and closeness to the language repertoire of the child appears as:

1. Counsellor
2. Teacher
3. Random Lawyer
4. Selective Lawyer

This is no surprise, given the intentions of the different questioning modes. Individuals involved with the counselling of child victims of sexual assault are concerned with providing children with a format for talking through and discussing traumatic events in the least threatening way possible. They are concerned with preserving the mental welfare of the child and in achieving this aim the questions they ask are questions which offer maximum freedom of expression, in language with which the child is comfortable. Within a classroom teachers ask questions for different reasons ranging from assessment of what the child knows to a method for exploring new concepts and information. When teachers ask questions the focus remains with the child. The questioner tries to match what he or she knows about children, with the language and style of questions asked.

In a courtroom questions are asked for very different reasons. They display information, they are the weapons of combatative legal interactions, they are used to call the credibility of the witness into question, and they are competitive illustrations of legal skill and language manipulation. The extent to which children can deal with the language of these different questioning formats has been illustrated. The issue which now needs to be addressed is the magnitude of the mismatch between the language of the lawyer and the language of the child, and the features of lawyer language which can account for this mismatch.

If we focus our attention on the differences between repetitions which preserved "THE SENSE" of the original question and those which contained "NO SENSE" of the original question it is obvious that the questions generated by the transcript material posed problems for a significant group of children. There is also a very obvious difference between the lawyer questions which were randomly chosen and those which were selectively culled from the transcripts. The selectively chosen questions represent a pool of lawyer questions which display most clearly some of the language characteristics which are only common to a courtroom. These characteristics will be explored in more detail later in this report. The extent to which children could deal with repeating questions which have these characteristics is clearly displayed by the general lack of repetition success which all children had with the selectively chosen class of lawyer questions.

Within the selectively chosen group of questions only the six year olds scored 50% totally accurate repetitions. All other age groups scored between 0 and 33% totally accurate reproductions of these questions. The six year olds produced repetitions which had "NO SENSE" in 10% of the questions, while the remainder of the children produced "NO SENSE" in between 27% and 82% of cases where these questions were offered for repetition. Repetitions which displayed "NO SENSE" are the most blatant examples of those questions which fall outside the language repertoire of the child. Repetitions which display "THE SENSE" are the clearest examples of the synchrony between the language of the child and the language of the question.

The extent of the mismatch between the language repertoire of the child and the language of any particular questioning category can by measured by looking at the percentage of inaccurate repetitions which produced "NO SENSE". Most frequently the "NO SENSE" category was most clearly identified by the obvious lack of syntax of the piece of text produced by the child. Because the syntax had been interferred with, the meaning of the text was unclear or confused.

What can we now say about the extent of this mismatch?

If we look at the three eight year old children tested we have zero scores for "NO SENSE" for both the TEACHER and the COUNSELLOR categories. The language of these two questioning categories perfectly suited the language abilities of these three children. The RANDOM LAWYER questions produced "NO SENSE" in 27% of cases whilst the SELECTIVE LAWYER category of questions had "NO SENSE" in 53% of instances. Therefore, 27% and 53% of questions in both these categories were totally outside the language repertoires of these children.

A CONSIDERATION OF THE "A SENSE" CATEGORY OF REPETITIONS

So far the discussion of the results of the testing programme have only included two categories of responses, those which preserved "THE SENSE" of the original question offered for repetition and those which had "NO SENSE" as independent pieces of text. However, some shifts in repetition while not preserving "THE SENSE" of the original question, were syntactically and semantically

acceptable pieces of text and exemplify the child's imposition of meaning on difficult text. This is explored further in Chapter Ten.

A tabulation of those results for all thirty children tested appears above. It is clear from these results that although the language of the questions offered for repetition was outside their normal repertoire, as indicated by an inaccurate repetition, they still searched for, and imposed meaning on, what they had heard. They used a variety of techniques to change the original text into a piece of language which was comprehensible for them.

This tactic indicates that children actively search for meaning in what they hear. Their preference is for "A SENSE" rather than "NO SENSE". The existence of this category highlights the distance which must exist between the language of the child and the language of the questioner before "NO SENSE" is produced. Even if there is a mismatch between the child and the questioner's language capacities, as indicated by an inaccurate repetition the child will attempt to compensate for this distance and try to actively search for an independent and sensible piece of text. To fail in this task, as indicated by the "NO SENSE" category represents a total failure on the part of the child to hear the language of the question being asked. In everyday conversation most of us will choose to search for sense in the language of other people. Frequently messages are wrong, sometimes they are right. But when we can find "NO SENSE" in the language of the other person, frustration, confusion and a general inability to get a handle on the conversation are the likely results. Multiply these feelings by an anxiety quotient which adequately reflects the stress of the child witness under cross examination and we have a disturbing picture of what is happening to children in the courtroom context.

THE IMPLICATIONS OF MISMATCH

It is clear that in a courtroom there is a mismatch between the language of the lawyers and the language capacities of the children. This mismatch varies according to the particular type of question asked. As the questions become more courtroom specific and more combative, as under cross examination, the less likely it is that children will be able to hear the language of the question and the less likely it is that they will be able to respond in a meaningful and truthful way.

The results of this study must now be translated into the arena of those wider concerns expressed for child victims appearing as witnesses in court in cases of sexual assault. What do the results of this study and a close examination of extant transcript material tell us about the linguistic treatment of children in court? What language features particular to the courtroom contribute to the mismatch between children's language abilities and the language of the lawyers? How and why are these language characteristics employed by members of the legal profession and how justifiable is their usage? To what extent are the stories which children tell of their assault given due weight and consideration? What provisions are made for relatively inexperienced language users who appear as witnesses?

The results of the testing programme show that the language of the court is not well matched with the language capacities of the child. The degree of mismatch varies according to the language devices used by lawyers. These devices and an explanation for why they are not heard by children will be dealt with subsequently.

The immediate implications of the established mismatch as displayed by the results in the "NO SENSE" category of repetitions should now be examined, as these form the springboards to a more detailed and expansive appreciation of the child as a witness in court.

"NO SENSE" responses indicate that the language of the question is outside the repertoire of the child's language capacities. If the child can impose no sense on a question, the corollory must be that the quality of their responses in court to questions of that type, are of dubious value. This must be interpreted as being a reflection of the lack of insight on the part of the questioner rather than an issue which calls the credibility of the child into disrepute. The questioner is the individual with the power to competently match the language of the questions with the language capacities of the witness. The respondents are instructed that they have no responsibilities other than to answer questions truthfully and to the best of their abilities.

They have no capacity to negotiate and no opportunity to express their frustration at not understanding questions. The interactions between the lawyer and the respondent are prescribed by tradition and protocol which serve to perpetuate language mismatches. The processes of the law can proceed with no recognition or acknowledgement of the fact that children are being disenfranchised by language. The more constrained the questioning format used by the lawyers the less likely is it that this mismatch would become observable. If a child has been asked to answer "YES" or "NO" the answer offered by the child tells the questioner nothing about the child's appreciation or hearing of

the question. If you are offered two options and you have been told to choose one, it is quite possible to reply without having heard the proposition which demands your response. The "I DON'T KNOW" response is the only other option available to the child when confronted with a question. This response is often used to call the credibility and reliability of the child into disrepute. The speciousness of this argument will be discussed in more detail in Chapter Six but it is worth noting here that this response may represent a reaction to a question which is not matched with the language capacity of the child witness. If the child has not heard the question, if they do not feel able to answer definitely either "YES" or "NO" the only alternative that remains is the neutral linguistic territory provided by the "I DON'T KNOW" response.

Another issue which arises as a consequence of the mismatch between the language of the lawyers and the language of the children is the cumulative effect on the child of being confronted by questions which do not linguistically form part of their speech repertoire. Confusion, frustration, despair are understandable reactions on the part of any person to a combative sequence of ill matched questions. If language is the pre-eminent mode of display in the establishment of truth in court then it is being used to exclude and punish the child victim. Language mismatch implies a form of secondary punishment and victimisation which the child does not invite or deserve.

The more extensive and prolonged the mismatch between lawyers and children, the more likely it is that the whole interaction between witness and cross examiner will become confused and disjointed. Ripples of distress spread out across questions which may be perfectly matched to the child's language abilities but the history of past difficult questions inevitably leads to the break down of the child witness. These breakdowns may be attributed to a number of causes: the presence of the alleged offender in court, the architecture of the courtroom, the male dominated environment and the lack of support which the child feels. It is likely that all these factors could be accommodated by the child if the language which confronted them was sympathetic to their level of development and accuity. However, it is not and the effect of being confronted with questions outside the child's language capabilities accounts for a great deal of the pressure which produces distress and tears.

The point at which the mismatch between the language of the lawyers and the language of the children becomes critical and causes effective communication to completely break down also should be considered. Is less than 100% match acceptable? Given the normal interactions between communicators mismatch is tolerable as long as both parties have the opportunity to explore and discuss areas of confusion. In court this is rarely the case. Inexorably the one questioning moves on, with the initiative for appreciating the sensitivities and capacities of the child firmly vested in the hands of the cross examiner. The child witness only possesses the right to respond to the questions asked, and the right to break down. In this context the ability to explore the mismatched pieces of text is removed. The words are everything, and the relationships pre-ordained. Anything less than 100% matching between the language repertoires implies that the child is replying to misinformation.

QUESTIONS FOR ELEVEN YEAR OLDS. SELECTIVE LAWYER QUESTIONS

1. That's not quite correct is it, you had been out with him before let me assist you, you have been to the Sturt Mall with Peter and your brother Ted on a number of occasions before going to school in the morning hadn't you?
2. Remember that you told us before lunch break that you had never been out with Fred before this particular day, 8th of August do you remember saying that before lunch, do you remember or do you not?
3. Now there was another time when you went out with Fred and your brother apart from the Sturt Mall and that was to Cronulla Beach do you recall that, can't give you a date but in July about a month or so before the 8th of August, Fred took you and your brother to Cronulla Beach do you remember that?
4. I put it to you that those conversations on the Monday and Tuesday that I have spoken to you about, he said to you "I am working". What do you say to that?
5. Now he is suggesting some other things to you that might I suppose remind you that might have happened now I suppose it is hard to understand why he says these things to you when you say it didn't happen, that's hard to understand isn't it, but he is allowed to do these things and if you say it didn't happen, all you have to do is say no, okay or if it did say yes, now do you follow that?
6. How far away from your front door were you or from the front gate of your house when you got into the car? Two or three houses away or six houses or whereabouts was it?

7. Now when you reached the start of the rocks just when Fred held your hand and started to help you over there, do you recall how long it was before you got to the little cave area?
8. Now do you say that whatever it was that happened, or whatever it was that happened to you and Sue, you were in the kitchen at the time and you obviously heard something did you?
9. Yes if you would have a look at this document, is that the statement that you made to the Principal and that you referred to before giving your evidence today and that you signed?
10. Well I know, I understand what you have been talking about to her today but you see what I am asking you is this, that statement suggests that you said those things that you now say are wrong to the Principal. Now did you say it to the Principal or did you not?
11. Well you are not sure whether you said those things to the Principal which are wrong?
12. Well on the week before you made this statement to the Principal you said that one night you were in the kitchen?
13. All right so between his patting you and his attempt or his trying to put his squash racquet in your bag there was nothing else is that right?
14. Yes so he sat down beside you and started talking about the football and then he started tickling you and then what happened next in the sequence, do you understand?
15. You have got a distinct recollection of seeing Judy coming into the room have you?
16. This terrible thing happening to you, if there was someone else there you'd remember it wouldn't you?
17. Well what do you mean you can't remember, this is something you'd remember, you've just told the teacher, that's the instructor, that if Judy had been present that'd be something you'd remember, do you remember saying that earlier?
18. Well that would be something you'd remember wouldn't it, you see the position is I suggest to you you're not telling the truth?
19. You read through this statement a day or so after you made it and there was nothing wrong with it, is that right?
20. See we went through the sequence of what happened and how you stayed in bed and your father went out, he went downstairs, do you remember all those questions?

COUNSELLOR QUESTIONS

1. Do you know why you are here?
2. Where was your Mum when it happened?.
3. How many times did it happen?
4. When did it happen?
5. How did you feel?

RANDOM LAWYER QUESTIONS

1. You went for a swim there I am putting to you at Cronulla Beach?
2. Well I am not concerned with what your father does or doesn't allow you to do I am concerned with what you actually did?
3. I will put this to you that on Wednesday afternoon that's the 7th of August, that's the day before the Thursday at about half past three in the afternoon you telephoned the place where Frank was living, what do you say to that?
4. You do realise or do you realise the important position Fred is in at the moment?
5. You do understand the importance of telling the truth don't you?
6. Are you denying that it happened?
7. Was it a long time or a short time?
8. All right. Well what is the next thing you recall happening as regards Sue?
9. And you indicate as you walk out before the door, directly on your right hand side is the doorway that lead into the bathroom?
10. So where is the doorway of the bathroom?
11. Just so, you have drawn two drawings, on the left hand side is a larger version, on the right hand side is a smaller version, is that right?
12. Whose address is it in Garland Street?
13. And what did she say to you?
14. Did Sue tell you what she told her mother?
15. Well, were you saying anything?
16. And you say you got it in?
17. And between the first time and this time had you slept in your mother's bed on a number of occasions in the meantime?
18. After these things happended did you go in September of this year, did you go to see a doctor, where you were examined by a doctor?
19. It went in a little way is that right?
20. The first time this terrible thing happened to you, do you remember that?

TEACHER QUESTIONS

1. Can you explain to me the way you think the eyes work?
2. Could you tell me about what happens at school on Fridays?
3. What happens when Daddy comes home from work?
4. What sort of thinks do you usually do on weekends?
5. What do you remember about the last school holidays?

Child JAMES Age 11 yrs Question Class Selective Lawyer

No. in Class 20

% of Class of Reproduction

1. TOTAL REPRODUCTION

Q. Nos. — — —

— — — —

— — — —

Total Sense —

2. SINGLE ELEMENT CHANGE

Q. Nos. 11 16 —

(2) — — —

— — —

— — —

			Yes	No
Omission	1	Syntactic Dislocation		11
Addition				
Substitution	1	Semantic Dislocation		11
Transposition				

The Sense 1 — 5%

A Sense 1 — 5%

No Sense — —

3. MULTIPLE ELEMENT CHANGE

Q. Nos. 12 13 14

15 — —

(4) — — —

— — —

— — —

			Yes	No
Omission	𝍸 𝍸 𝍸	Syntactic Dislocation	11	11
Addition	11			
Substitution	𝍸 111	Semantic Dislocation	11	11
Transposition	1			
Reconstruction				

The Sense — —

A Sense 11 — 10%

No Sense 11 — 10%

4. NIL REPRODUCTION

Q. Nos. 1 2 3

(14) 4 5 6

7 8 9 10 17 18 19 20

No Sense 14 — 70%

NOTES:

44

52

52

Child JAMES Age 11yrs Question Class Counsellor

No. in Class 5	% of Class of Reproduction

1. TOTAL REPRODUCTION

Q. Nos. 1 2 3 / (5) 4 5 — / — — —

Total Sense	
5	100%

2. SINGLE ELEMENT CHANGE

Q. Nos. — — — / — — — / — — — / — — —

			Yes	No		
Omission		Syntactic Disloction			The Sense	
Addition					A Sense	
Substitution		Semantic Dislocation			No Sense	
Transposition						

3. MULTIPLE ELEMENT CHANGE

Q. Nos. — — — / — — — / — — — / — — — / — — —

Omission		Syntactic Dislocation			The Sense	
Addition					A Sense	
Substitution		Semantic Dislocation				
Transposition					No Sense	
Reconstruction						

4. NIL REPRODUCTION

Q. Nos. — — — / — — —

No Sense	

NOTES:

45

Child JAMES Age 11yrs Question Class Random Lawyer

No. in Class 20

1. TOTAL REPRODUCTION							Total Sense	% of Class of Reproduction
Q Nos	6	7	12					
(8)	13	14	15	→			8	40%
	16	19	—					
2. SINGLE ELEMENT CHANGE						Yes	No	The Sense	
Q Nos	—	—	—	Omission		Syntactic Dislocation			
	—	—	—	Addition				A Sense	
—	—	—	—	Substitution		Semantic Dislocation			No Sense
	—	—	—	Transposition					
3. MULTIPLE ELEMENT CHANGE									
Q Nos	1	2	4	Omission	𝍸 𝍸 I	Syntactic Dislocation	III	I	The Sense
	5	—	—	Addition					A Sense 1 — 5%
(4)	—	—	—	Substitution	I	Semantic Dislocation			
	—	—	—	Transposition	I		III	I	No Sense III — 15%
	—	—	—	Reconstruction					
4. NIL REPRODUCTION								No Sense	
Q Nos	3	8	9	→				8	40%
(8)	10	11	17						
	18	20							

NOTES:

46

55

56

Child JAMES Age 11yrs Question Class Teacher

No. in Class 5

% of Class of Reproduction

1. TOTAL REPRODUCTION

Q. Nos. 3 4 5

(3)

Total Sense: 3

60%

2. SINGLE ELEMENT CHANGE

Q. Nos.

			Yes	No
Omission		Syntactic Dislocation		
Addition				
Substitution		Semantic Dislocation		
Transposition				

The Sense

A Sense

No Sense

3. MULTIPLE ELEMENT CHANGE

Q. Nos. 1 2

(2)

			Yes	No
Omission	III	Syntactic Dislocation		II
Addition	I			
Substitution	III	Semantic Dislocation		II
Transposition				
Reconstruction				

The Sense: 1 — 20%

A Sense: 1 — 20%

No Sense

4. NIL REPRODUCTION

Q. Nos.

No Sense

NOTES:

57

58

47

"Melinda is 13 and today she is going to appear in court for the second time. Her stepfather is charged with sexually assaulting her every Tuesday night while her Mum was at Weight Watchers. That was two years ago. Melinda prods the floating marshmallows in her hot chocolate. "I know how it was last time, so I brought my own" she says as she fiddles with her large pink box of Kleenex tissues."
(R.E.B.)

6 YOU CAN REALLY SEE THE DIFFERENCE!

The four graphs represent the responses which children made when asked to reproduce questions presented as a mixed list. Three children each, of the ages between 6 and 15 years, of high, middle and low general language ability are represented. The questions they were asked to reproduce were functionally chosen according to the following -

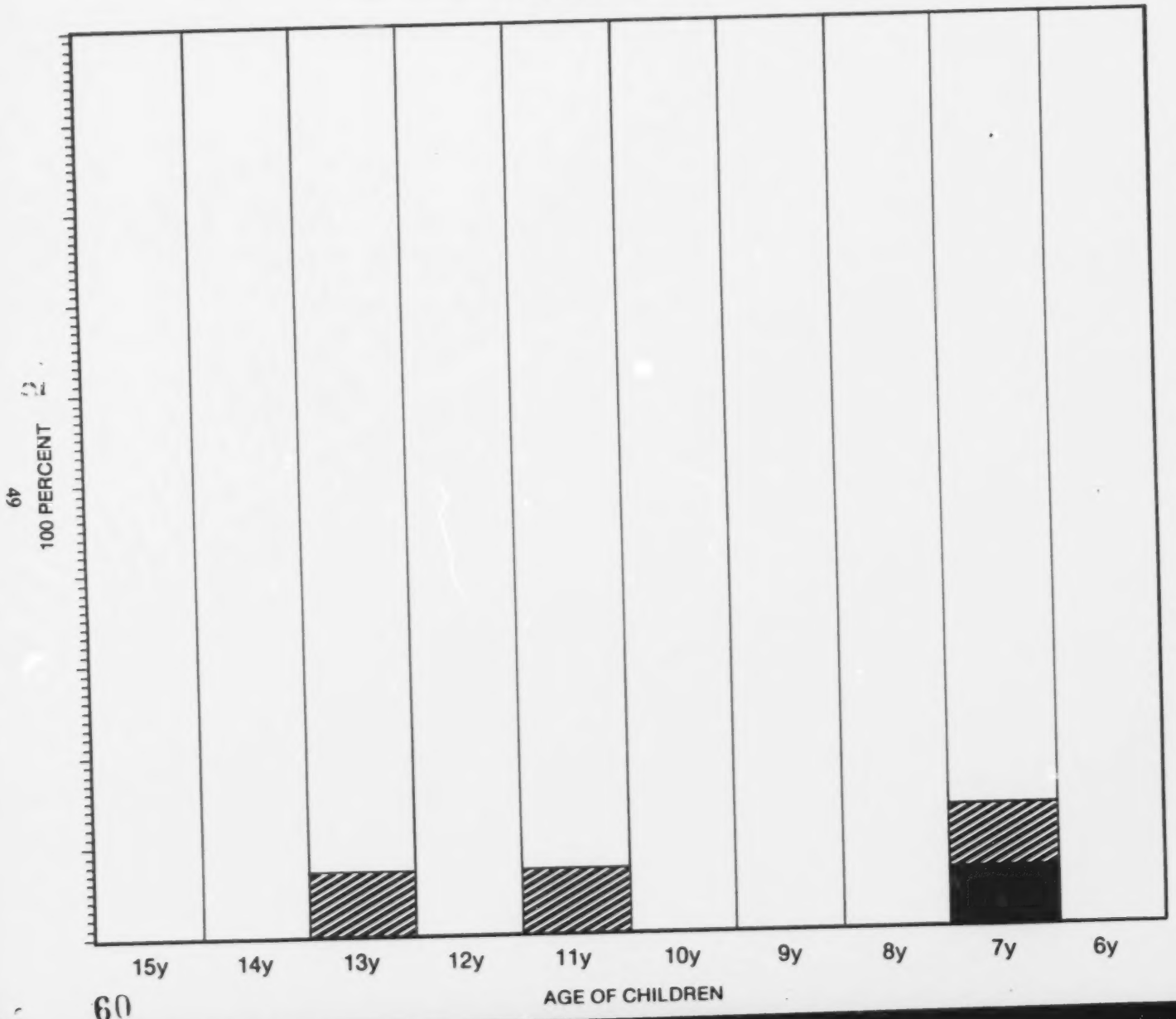
1. **Selective Lawyer** — questions chosen from transcripts of cross examination of children according to our own subjective views of what might constitute strange language.
2. **Random Lawyer** — questions chosen from transcripts of cross examinations of children, according to a random set of numbers. 200 out of a possible 5654 were so chosen.
3. **Teacher** — questions from teachers and teaching situations identifiable with children of specifiable ages.
4. **Counsellor** — questions from counsellors and counselling situations identifiable with children of specifiable ages.

The testing programme itself and implications arising are previously discussed in Chapter Four. The outstanding features of the graphic summaries here are as follows.

i. COUNSELLOR questions in all but one instance were reproduced with the sense left intact. Some element of challenge is obvious however, indicated by several instances of single element changes, but which nevertheless were reproduced with the original sense of the question. This is not surprising and indeed is an expected kind of result from an activity designed to include the sensitivities of the respondents to the fullest possible extent. It should be noted here though that we are looking not at individually tailored questions but a genre of questions asked in a counselling situation which children unconnected with that situation are asked to reproduce.

ii. TEACHER questions when reproduced displayed a variety of responses. This possibly reflects the classroom orientation of teacher questions where regrettably a proportion of children are always left out. There is a definite entrance, according to these results, at the age of 10, of children who lose their grip on the language of the questions asked by teachers. Overall **The Sense** is reproduced 80% of the time, **A Sense** is reproduced 10% of the time and **No Sense** is evident 10% of the time. In an educational context a developmental perspective is acceptable when reviewing children's achievements in language and learning, and it is not generally expected that children will make **The Sense** of all that is said to them the first time. It is enough that **The Sense** is made most of the time and that **A Sense** occurs so that **The Sense**, if appropriate, can be worked towards. Special provision has to be made for children who fail to grasp sense either fully or partially.

Question type – **Counsellor**



KEY

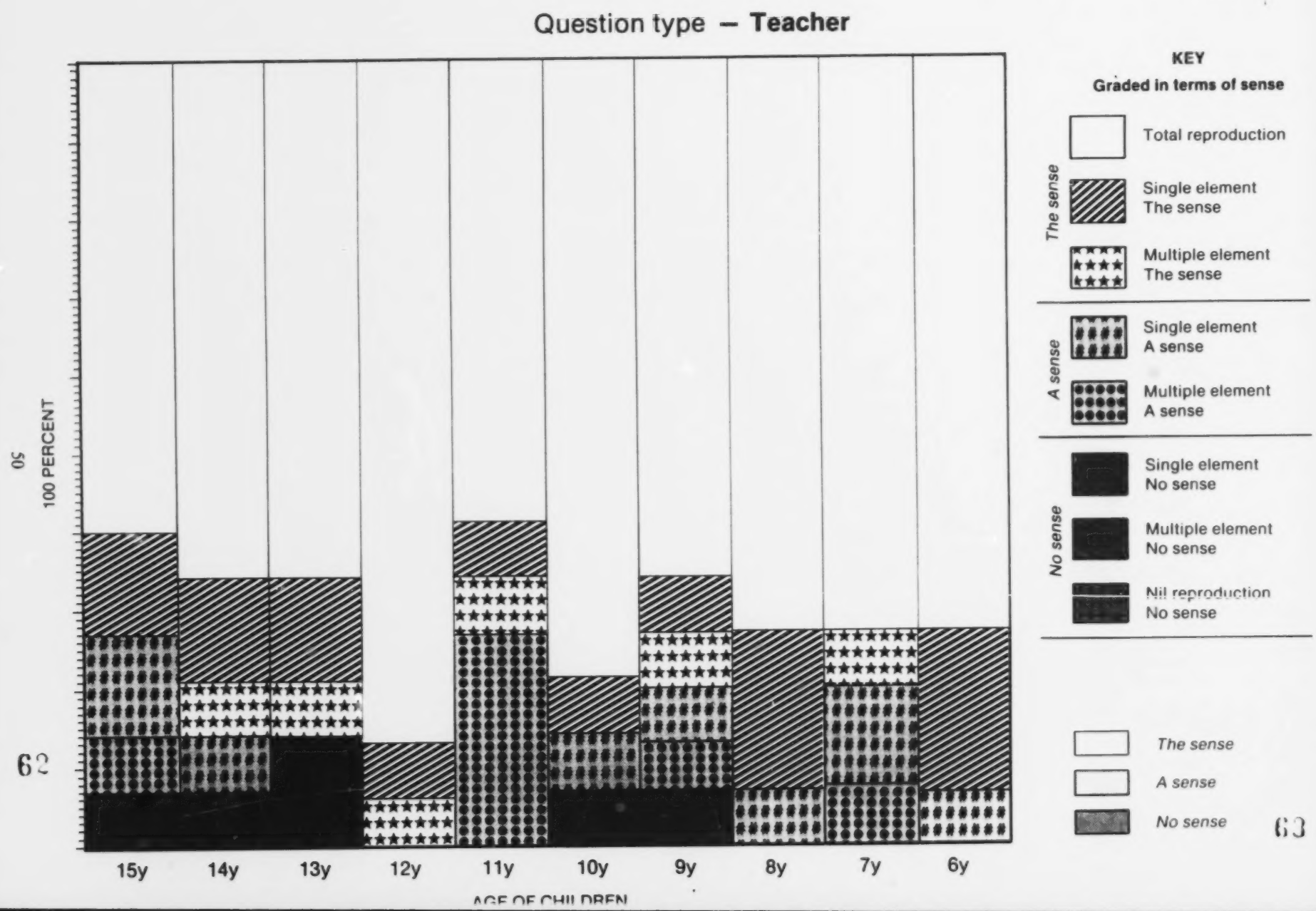
Graded in terms of sense

The sense
- Total reproduction
- Single element The sense
- Multiple element The sense

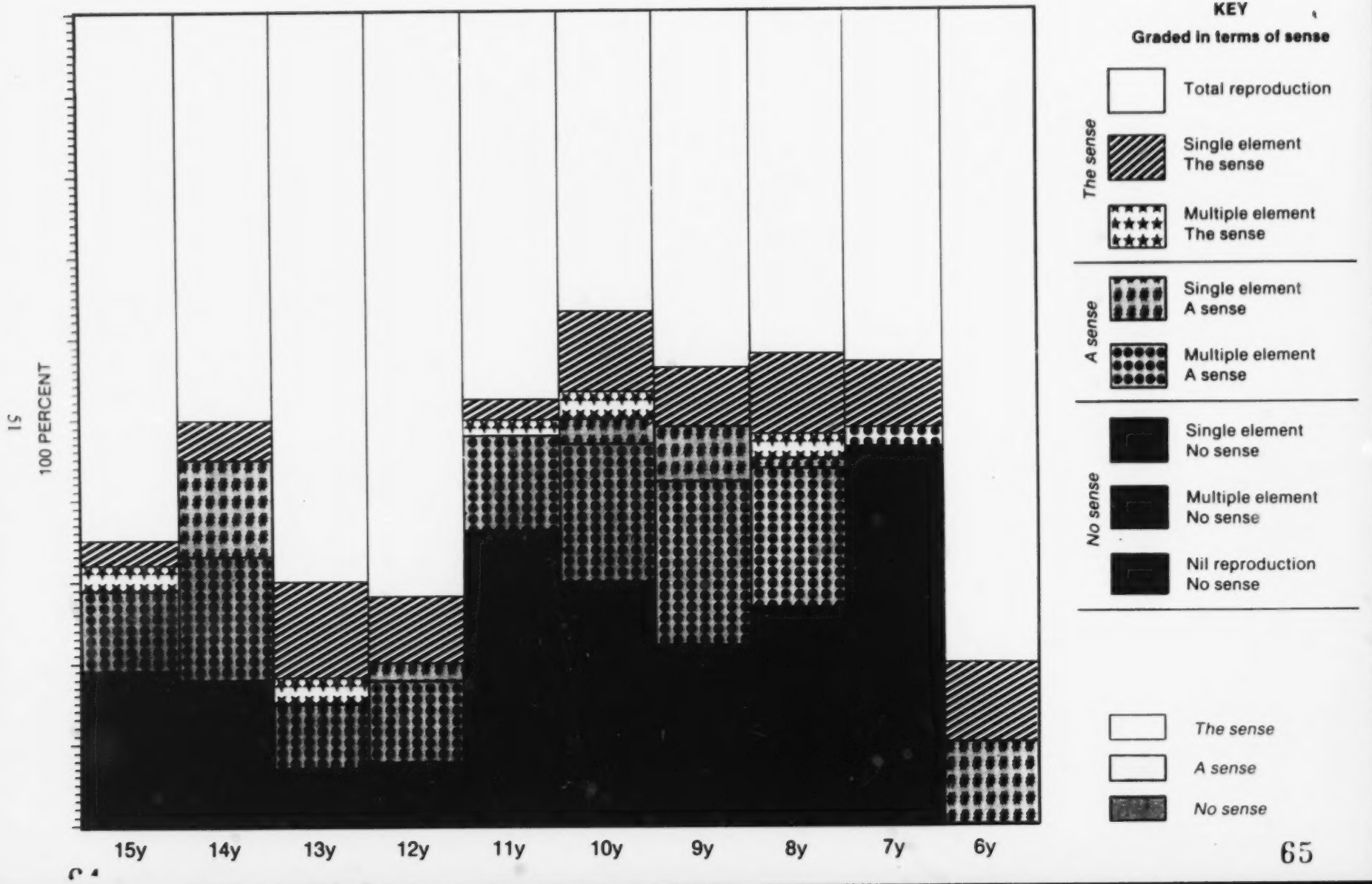
A sense
- Single element A sense
- Multiple element A sense

No sense
- Single element No sense
- Multiple element No sense
- Nil reproduction No sense

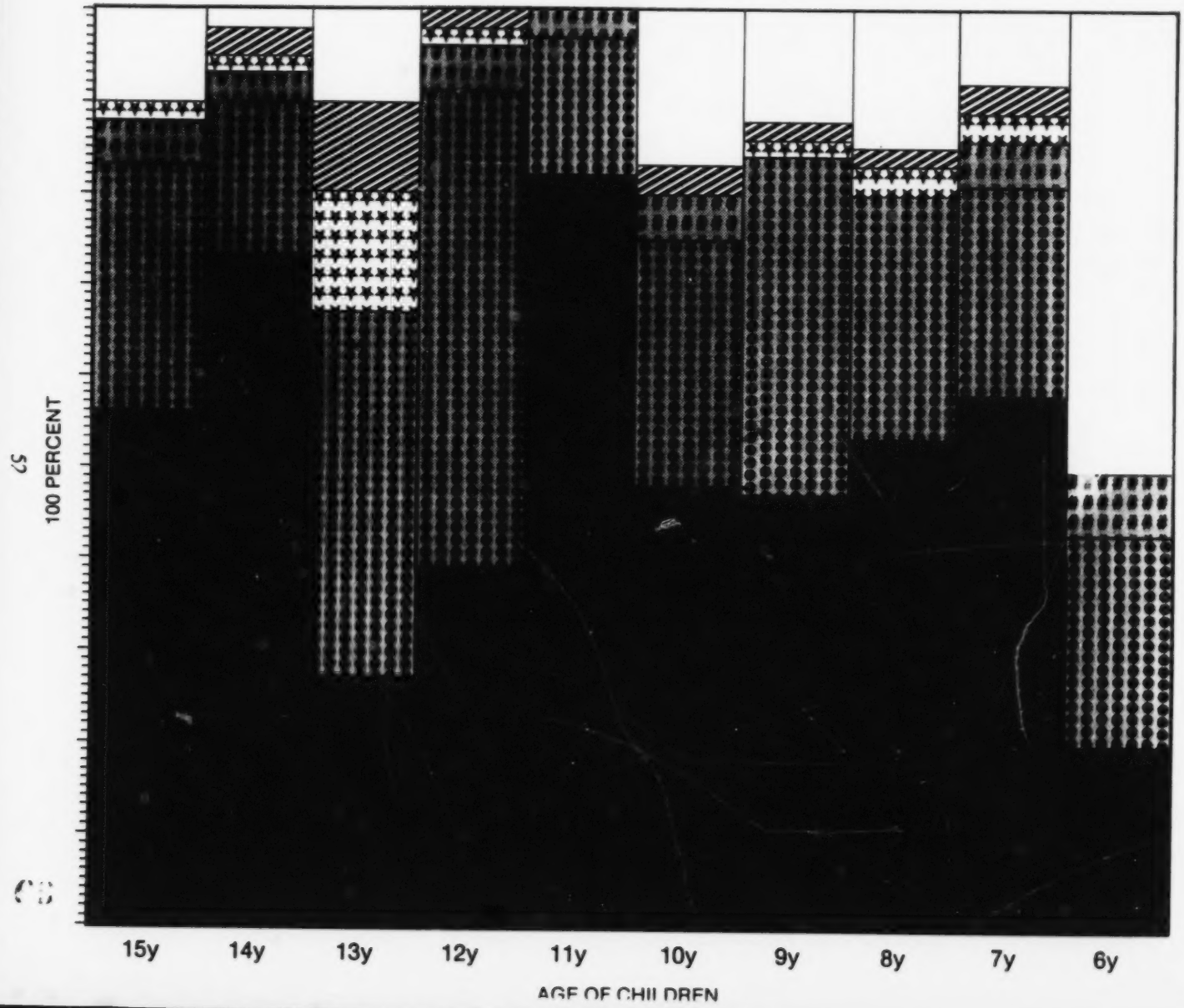
The sense
A sense
No sense


Question type – Teacher
100 PERCENT
50
15y
14y
13y
12y
11y
10y
9y
8y
7y
6y
AGE OF CHILDREN
KEY
Graded in terms of sense
The sense
Total reproduction
Single element The sense
Multiple element The sense
A sense
Single element A sense
Multiple element A sense
No sense
Single element No sense
Multiple element No sense
Nil reproduction No sense
The sense
A sense
No sense

Question type — **Random Lawyer**



Question type — **Selective Lawyer**



KEY

Graded in terms of sense

The sense
- Total reproduction
- Single element The sense
- Multiple element The sense

A sense
- Single element A sense
- Multiple element A sense

No sense
- Single element No sense
- Multiple element No sense
- Nil reproduction No sense

The sense

A sense

No sense

iii. The reproductions of RANDOM LAWYER questions show that **The Sense** is evident, according to what the unstressed children of the testing programme heard, around 60% of the time. **The Sense** is missed 40% of the time. These questions are usually asked in a context which operates according to strict rules of procedure aimed at generating precision and accuracy. **A Sense,** however sensible, is not acceptable yet appears around 20% of instances and **No Sense** is evident the other 20%. The greater amount of the **No Sense** score is due to no attempt at reproduction being made. These questions were not heard well enough to even make a stab at reproducing them.

iv. The SELECTIVE LAWYER questions show more than anything else that our selective choice of the questions was by and large discerning with some 15% only being capable of reproduction with **The Sense.** A third of these required "creative editing", as shown by the maintenance of sense in spite of single and multiple element changes. Around 30% displayed **A Sense** and over 30% of all the questions were lost to the hearers. The least affected age group in both the lawyer selections, it should be noted, were the six year olds. Possibly this indicates an echoic response.... where their hearing was not impaired by a search for meaning. If nothing else this differential shows clearly the frailty of interpreting in only one way, in only one situation, childrens' responses to questions.

Notwithstanding this, the overall results here, across ages and ability groups, clearly show that the tested children failed to hear certain questions which were chosen from courtroom transcripts, with offensive material edited, in terms of **The Sense,** 85% of the time. There is also no clear evidence of any adjustments being made for the age of the children. We shall consider in detail some of the features of these questions in the following sections. The actual reasons for a failure to respond can of course be various, ranging from being offended, to being confused, to not being in total possession of the information. Alienation from the language forms where people simply don't comprehend the communicative and message making conventions around them can also define the inability to respond...because they do not hear. The rest of this publication substantiates the case that in an unacceptably large number of instances a child's inability to hear is because of the strangeness of words and situations. The strangeness is used in cross examination to deliberate effect and capitalises well on the predispositions of the child victim.

"I put it to you that this is all a figment of your imagination. Is that not right?"
(N.S.W. Committal Hearing, 1986)

7 ASK ME SOMETHING

The regulation of courtrooms including the giving and taking of evidence is primarily about the manipulation and control of words.

Lawyers cock their critical ears at the slightest suggestion of leading questions; questions which if asked will supposedly mask the truth by suggesting part of the answer. Along with this goes the implicit belief that other, nonleading questions are somehow neutral; that their effect is minimal in suggesting this or that answer. No language however is neutral whatever its expression. To say or do anything is to not say or do something else and this alone makes language non-neutral. All language acts upon its users, some more powerfully and obviously than others.

"Whether formally as part of their semantic structure, or through assocations picked up along the way, the meanings of words lie at varying depths. To traverse them is to cross a minefield where every step triggers a silent explosion in the brain" (Bolinger, 1980).

Questions, as we know, do not always solicit answers. Some even preclude answers. The classic example of course is "Why don't you go and jump in the lake?" It might take the form of a question but it doesn't suggest an answer, although it might get any number of responses. On the other hand the expression with the surface characteristics of a statement "Tell me about the new car" and uttered with a slight rising, intonation at the end would likely give rise to an answer. It would probably include information about either the car or the new owner's reactions to it. Between these two examples lies a field of expressions which suggest concern, interest, a need to know, a search for precision or the testing of propositions. Their effect may not, however, be to adduce information.

"You're making this up aren't you?" "Isn't it true that you told him to say that to her?" "Are you sure of that?" all appear as questions but the replies they suggest vary.

The concern of this study is with a particular issue, the ability of child victims to respond to cross examination in criminal proceedings of alleged sexual assault. It is appropriate then to focus in a functional sense upon the questions used. The function of questions can be viewed in terms of the kinds of responses they solicit, provoke or admit. Whether these **responses** are then endowed with the status of **answers** becomes a contentious issue. What we are asserting here is that the quality or nature of a question is legitimately viewed through the response it evinces, and that that response is driven by forces other than the question itself. But the question is pivotal to the response in that it can stimulate, capitalize upon and define those other forces.

We quote here from the recent and significant publication "Sexual Abuse of Young Children" by Kee MacFarlane and Jill Waterman et al. (1986) as they make connections between the state of the child and the responses she or he gives.

"It is time to recognize that child sexual abuse is not comparable to other types of adult crimes, and should not be investigated as though it were. Children who have been frightened into silence about things they do not comprehend, and may not even have the language to describe, represent a special population that demands specialized approaches.

Questioning a young child about sexual abuse is not comparable to asking a burglary victim to enumerate items that were taken from his or her home. Asking a child what, if anything, unpleasant or unusual happened to him or her during a certain period of time may be an acceptably neutral way of framing a question, but if a young child has been molested and told not to tell, it is unlikely that the abuse will be revealed. Such a child might then become one of the thousands of adults who have reported that they never told anyone as a child because no one ever asked them (Finkelhor, 1979b; Herman, 1981; MacFarlane and Korbine, 1983; Russell, 1984)". (MacFarlane, 1986).

The focus here is obviously with counselling the child and an effort by all concerned to arrive at a

statement of happenings and effects that are recognisable as the truth. The rules for making this happen are in accordance with what we know about child development generally and what we know about asking questions in a search for information. The following is an example of a set of guidelines which recognises that knowledge.

DEVELOPMENTAL STAGES IN THE YOUNG CHILD'S ABILITY TO RESPOND IN INVESTIGATIVE INTERVIEW

The normal child's ability to respond to questioning of an investigative nature evolves in a developmentally progressive way. There is a normal sequence in which children can respond to questions such as "what happened?", "who did it?" etc. and this depends not only on chronological age but also developmental age and the child's emotional status. Therefore these aspects must be explored initially in order to ascertain the level of functioning of the child being interviewed.

There are three main stages in the investigative interview process. These are:

(1) establishment of rapport between interviewer and child;
(2) eliciting of the details of the abuse;
(3) termination of the interview and reassurance of the child.

It is in the first stage that the interviewer will assess the level of functioning of the child by simple conversational devices to check out how the child responds and what sort of questions cause difficulty. It is therefore important when working with very young children to have a good working knowledge of 'normal' developmental stages in children's cognition. This knowledge can come from academic literature but best comes from not only an awareness of the literature but also from regular interaction with 'normal' (that is, non-Departmental children). In clinics, counselling, welfare etc. we see a very biased sample.

The major facts which have to be elicited during an investigative interview can be summarised in the major question asking words like WHAT, WHO, WHERE, WHEN, WHY.

(1) WHAT (happened)?

The normal 2 to 4 year old child can answer only closed questions. He is not able to respond to a general "tell me what happened" sort of question. Motor memory is better than verbal recall and it is at this stage that more productive information will be gained through demonstration using drawings, anatomically correct dolls etc.

At this stage, children have a tendency to perseverate in responses. That is, once they begin responding "yes", "no", or "don't know" they can continue with the same response regardless of its applicability to the question. This perseveration can come from fatigue, embarrassment, lack of understanding or pigheadedness. Interviewers should interpret yes/no/don't know responses cautiously. One method of checking out the reliability of a string of similar responses is to insert a question to which you already know the answer.

As the child matures, so does his competency in the amount and quality of the description he can offer verbally. By age 5, the child may be able to respond quite explicitly to open ended questions related to the abuse. By age 7, social factors (for example, embarrassment, fear) may begin to impede the quality of the child's responses and the interviewer may have to work harder to gain the child's trust.

(2) WHO

A child aged 2-3 can usually identify other people through language or other methods, for example, photographs. The closer the child is to age two, the less likely that he will easily and consistently respond to the question "who did it?" Children from age 3 onwards are usually accurate in identification.

(3) WHERE

The child aged 2 years to 2½ years can tell you where he is currently but it is unlikely that he will be able to tell you where he was at any other time. It is not until 3 years plus that a child will be able to describe where an event occurred and the younger the child, the poorer the description will be.

For the average child of up to and around 3 years of age, it is wise to avoid asking questions involving colour or number as these concepts are usually not well established at this age. Avoid asking "did it happen in the pink room?" or "was it in the room with two beds?"

At age 4 to 5 years, the child may be able to describe the evironment where the abuse took place but is usually unable to define the location (for example, "it happened near the water" but which particular piece of water is unknown). If abuse has occurred in multiple locations, the child will have to be at least 5 or 6 years old before he can identify these in useful detail.

By age 7 to 8 years, the child can usually relate the site of the abuse and the location of other relevant family members at the time.

(4) WHEN

A child will be at least 8 years of age before he can give any accurate information as to the time when the abuse took place. Younger children may be able to indicate whether it occurred daytime or night-time, or be able to relate it to a major life event such as birthdays, Christmas etc. Below 8 years of age, understanding of time and dates is very limited.

(5) WHY

This is generally not a question that is useful to ask of children much under 10 or 11 although occasionally younger children will ask this of the interviewer or caseworker. To throw the question back on the child who is under 5 is likely to result in a "don't know" or an avoidance of answering. Up to about 8 years, the child is likely to respond in ways that reflect the information the child has been given by other adults, for example, "because I'm pretty" etc.

DISRUPTIONS TO THE DEVELOPMENTAL SEQUENCE

Although the average child moves through this sequence in his ability to contribute meaningfully to the investigative interview, consideration should be given to factors which can disrupt the normal process. Developmental delay is a major factor and whilst this will affect the age progression involved, it is useful to bear in mind that the sequence generally remains the same, except that each stage occurs later. There are some exceptions to this hence the need to investigate the child's ability to respond during the rapport building section of the interview. These stages are also useful to bear in mind when interviewing developmentally delayed adults who have been abused.

Other factors which can impede investigation include emotional immaturity, poor socialisation, speech and language delay (with or without developmental delay) and these have implications for the initial assessment process during the establishment of rapport.

The existence of these conditions have implications not only for the amount of information that can usefully be gained from the child, but also for the types of materials that will be used in the interview process.

MORAG BUDISELIK
Psychologist
Developmental Disabilities Team
Community Health

March 1987

(Adapted from Gary and Rosenberg, 'Interviewing Sexually Abused Children', International Conference on Child Abuse and Neglect, Sydney, 1986).

Such procedures recognise the nature of the client and also the need for a variety of procedures all of which are aimed at establishing the truth and detail of incidents. "When children are given permission to answer questions in a variety of ways, they will be less likely to use answers such as "I don't know" as protective mechanisms against things they are not ready to reveal" (MacFarlane, 1986). Questions asked in a way that preclude all but one or two responses are not questions which recognise the condition of the child victim. Questions which require "Yes" or "No" in response are insufficient for diagnosis and evaluation in other arenas yet in court, credibility can rise or fall on a series of Yes/No responses. Back in the counselling context Kee MacFarlane states "...one wants to feel assured that the information is coming from the experience of the child, not from the influence of the interviewer". Questions asked in cross examination are aimed at not admitting the experience of the child and attempt to influence the child's response quite deliberately. Whatever the rationalisation for the court procedures they are generally not recognizing the needs of the child, or the admissability of evidence gathered and cross referenced outside the combative, interrogating context of the courtroom.

What kinds of questions and procedures would enable this to happen? What are the features which distinguish between answerable as opposed to non-answerable questions? A clue to these queries lies in the responses which are less than answers; responses which neither confirm nor deny a proposition and which contain little information. One very common response to questions asked of children during cross examination is "I don't know". This response is not usually acceptable as an answer, as a Yes/No response or one containing information might be. The effect of the response however, goes beyond a supposed lack of knowledge to create an impression of an unreliable witness, a subtle but profound difference when credibility is at stake. This is illustrated in these two extracts from a transcript which appears in full, in Chapter Eight.

Q. And where was your mother. A. I don't know.
Q. You do not know, but she was in the house when you went to bed was she not? A. I think so.
Q. Yes. Sorry, you think so. A. Yes
Q. Can you not remember? A. Yes
Q. Where would she have been if she was not in the house? A. I don't know.

Q. Now can you remember the first incident that something, that you say Uncle David interferred with you at Horsley. A. It was at the Commission house.
Q. Yes, and was, that was in the morning was it not? A. No.
Q. It was not in the morning? A. No.
Q. When was it? A. In the night.
Q. And what time of night? A. I don't know.
Q. You do not know? A. No.

The response "I don't know" can stand for a variety of states of knowledge but the purpose of cross examination is well served as it reduces the credibility of the witnesses. ".....learners have different thresholds for uncertainty and frequent users of "I don't know" express uncertainty only when they have no idea at all.....some learners may tolerate great levels of risk and guess when the likelihood of a correct response is 50%. Others may choose a response only if the likelihood is 90%." (Linn, 1987). Although these assertions are in the context of a discussion about educational testing the point is clearly made that the response "I don't know" can be provoked from different people under a variety of conditions. The conditions of court suggest precision and total accuracy. Given the language and propositional conditions of expressions used in court it remains an athletic exercise to force "I don't know" or its companion "I can't remember" on witnesses.

These questions come from the cross examination of a fifteen year old boy about something which allegedly happened three years previously. "Just to be clear there is no doubt in your mind, you were assaulted the first time on the first night on the first occasion? What were you doing this first night? On the night what were you doing?" "If I asked you as I have, were you asked to stay at the Patton's you would understand what I ask would you not?"

These questions are followed in this particular case with enquiries about details of the behaviour of the witness when he was nine years old. He said "I can't remember" 53 times. The "I don't know" or "I can't remember" response tells us about the style of the question and about the general level of confidence of the respondent who has been instructed to tell only "the complete truth". "I don't know" is often an indicator of uncertainty rather than a total admission of a lack of knowledge about an incident. This concept is compounded by the companion assertion that "....females admit negative feelings such as anxiety more readily than males do...". Also "An unwillingness to take risks may also lead females to avoid giving definite answers. Not giving an answer has the advantage that it avoids being 'right' or 'wrong'....thus saying "I don't know" provides an alternative to two unpleasant choices". (Linn, 1987)

When the situation requires total certainty about multifaceted questions, and where the respondent is vulnerable for a number of reasons, saying "I don't know" and "I can't remember" are expected responses. We should not equate this however with not knowing and not remembering. The uncertainty many witnesses feel, but which child victims manifest more than most, can be increased in a number of ways, thus increasing their tendency to appear either misinformed or uninformed. Pressure is applied, not upon their evidence, but upon their ability to withstand the volume and style of interrogation. The requirements of what constitutes a good witness for the prosecution are increased for children so that only the most resilient and articulate will be called. The rest of the child population remain as victims. Some of the general characteristics of questions which cross examination capitalises upon are as follows:

1. Complexity

Questions can be asked in a variety of ways with some being more difficult to process for the hearer than others. The complexity of any given utterance will depend on the number of connections that have to be made and how those connections are cued. Simple questions can be asked in a complex way. Complex questions make the listener work hard.

2. Connections

Questions are rarely asked in isolation and, in cross examination, come one after the other. Ordinary conversation is in part driven by cues and clues about what is coming next and how what we are talking about now is related to something before. The connections between utterances are as vital to their sense as the utterances themselves. Unconnected utterances require constant re-orientation.

3. Volume

Questions require responses and anyone's ability to respond coherently is limited. The sheer volume of questions can make a witness acquiescent and likely to respond in the easiest way possible. The responses may or may not be adequate answers.

4. Significance

Questions have their own significance depending on what kind of response is required and in what context they are asked. To answer in a variety of ways is a normal predisposition as well as more informative. The singular responses of cross examination leave a lot of information unsaid.

Questions also have a significance in accordance with what the hearer thinks they are being used for. Questions can be used to search for information.

- They can indicate the questioner's need to know.
- They can be used as a format to display evidence.
- They can also be used as a means of discipline or punishment.

There is a wealth of information available to counsellors and educators about questions and questioning. The tools are available and accessible for the evincing of information. By and large the evidence so gathered is not displayed in court usually because of the restrictive activities of cross examination. If the prosecution fails to understand and use such evidence however, and the bench does not encourage its use, then the most available avenue for the promotion of a child's welfare in court has been blocked. The maintenance of existing language practices will do nothing to alleviate this.

"Imagine a courtroom in which the following unlikely scene takes place:

Counsel: So you admit that you were at the scene from two minutes before the explosion until one minute after.
Witness: No.
Counsel: No? Didn't you just say that you were there?
Witness: Yes.
Counsel: Then why do you deny it?
Witness: I don't deny it.
Counsel: Then you admit it?
Witness: I do not admit it. I assert it. The person who admits something concedes that it is embarrasing to him to do so, that it is damaging to his position. The fact that I was there when I said I was is not embarrassing to me and is not damaging to my position".
(Bolinger, 1980)

8 A LANGUAGE OF THEIR OWN

Before reviewing the specific features of lawyer language (Chapter Nine) which account for the mismatch between children's language abilities and the language demands of the courtroom during cross examination of child victim witnesses of sexual assault, it is necessary to establish the language context within which all these interactions occur.

Lawyers are masterful language users. They may not be aware of the intricacies of their language usage at a conscious or descriptive level but they have at their disposal the benefits of fine training in the use and abuse of words, phrases, and structures. Their careers are built on words since these are the currency of the law. They know how to choose their words and structures to gain maximum effect, and they are skilled at using the words of others for their own benefit. In few other contexts are words and their meanings so tightly prescribed. To the child, a relative novice on the continuum of language usage, the distance between the language of the court and their own experiences of how and why language is used must appear immense. "..... When do you get a chance to say something...I'm only 15 and its hard for me to try and match their level of talking when you want to put something across. Some of the words they use, the long words that they might use and they might not even know the meaning of. And yet they sit there and they don't tell you and they expect you to answer" (15 year old male witness).

There are three conditions which surround the asking of questions in the courtroom.

Firstly, the fact that all interactions within the court are conducted on an adversarial basis for often lengthy periods of time will be disconcerting for the child witness. Their past experience of the world of language does not equip them well for this experience. Normal conversations contain a huge array of different language forms, including questions, explanations, expositions, descriptions, and narratives. The court allows only one of these forms, and that is strictly controlled by an established set of procedures. The lawyer asks the questions and the child is expected to respond. There is no provision, as there is in every other facet of communication, for the child to express their concerns, their possible lack of comprehension about the questions, or to negotiate in any way the content or direction of the line of questioning.

Secondly, because the cross examiner is a skilled language user, he or she has a keenly developed ability to swap from one style of questioning to another at an often hectic pace. This movement often involves using terms which the child has previously included in her evidence, for instance words related to anatomical parts and descriptions of the details of the assault. This can then be juxtaposed with long, involved and highly formalised questions. The expectation that the child witness can keep in step with these quick

changes of language register is unreasonable given their relatively short exposure to the world of language and its subtleties. They simply cannot keep up with the language pace and experience that characterises cross examination. However, in a more open context or when a child is allowed to move between contexts, children show themselves to be masterful linguists.

Thirdly, questions asked in a courtroom are not asked for the same reasons that questions are asked in the rest of society. Children are generally used to the idea that if someone asks them a question then that person is genuinely interested in hearing their answer. They are not used to questions being asked with the idea in mind that their responses can be manipulated for someone else's benefit, and that the someone else is the alleged offender. The major types of questions which children are asked in court in cases of child sexual assault are aggressively closed in terms of possible responses.

"Goody (1978) classifies questions according to two dimensions; whether they seek information or supply it themselves (rhetorical questions), and whether they offer deference or seek to exercise control. Questions that not only seek information but also exercise control include interrogation, riddles, direct examination in the courtroom and school exams. The last two share the characteristic that the examiner knows the answer; but in the courtroom the lawyer wishes to display that answer to the decision maker, whereas in the schoolroom the teacher wants to learn what 'the student knows". (Danet, 1980)

"In cross examination however, the order of the speakers is fixed in advance and whatever else is accomplished interactionally, their discourse must be fitted into the mould of the question answer sequences. This means that in contrast with spontaneous conversation, there is no negotiation over the right to speak or over what may be said".(Danet 1980).

Questions can be analysed and described in many different ways. Within the context of the child witness in court it is possible to view questions in terms of how solicitous of information they are. We can suggest for the sake of distinction two groups.

The first of these are elaborative questions, those which offer the respondent the opportunity to explain, expand, describe and qualify their expressed thoughts. "Can you tell us what happened?" "What did he do to you?"

The second group of questions are restrictive in that the options for response have been so circumscribed by the nature of the question that the child has her possible responses already set out for her. Ostensibly these questions are precise, clear in their intent, a neat package of words demanding a neat answer. Functionally they *constrain the child to offer a* yes/no reply, and effectively remove the child's right to offer any more than this.

"You liked living at Birdsville, did you not?" "Do you remember him saying to you "your mother ought to put you in a home where you belong?"

The child has no opportunity to discuss the content of the question, given this format. Her right to negotiate has been removed by the controls imposed by such narrowly constructed questions. The cross examiner may display, as in the second example above, quite destructive information about the child and the child can only agree, disagree, or maintain that "I don't know". The child witness is given no opportunity to disagree with this impression created, as she is forced to RESPOND to rather than ANSWER the question because the particular phrasing used demands this. These questions do not look for answers from the child. They demand no information. They require only a response. Questions asked by the prosecution in cases of child sexual assault can be open, allowing elaboration or extension, while closed questions asked by the cross examiner are restrictive in the kind of response they allow. Within this questioning superstructure the cross examiner has developed a set of language devices which are particular to the courtroom context. They consist of structures, vocabulary and language interactions which are seldom found in any other situation. The extent to which these language features discriminate against the child witness in court and linguistically mitigate against the 'search for truth' are the subjects of the following discussion.

The results of the testing programme undertaken with 30 children of different language abilities showed that all children had difficulty in hearing certain kinds of lawyer questions and that the degree of the mismatch depended on the type of question asked. Chapter Nine offers some possible explanations for this mismatch by looking at examples of lawyer specific language and questioning styles in cases of child sexual assault.

Cross examination represents the most crucial time in court for the child victim witness in cases of sexual assualt. The brief of the cross examiner is to display inconsistencies in the child's evidence, provide examples of the noncredibility of the child witness, refute allegations of the defendent's guilt and provide a context within which all the details associated with the case are examined microscopically. The role of the cross examiner is to disprove the case against his client and to achieve this certain language devices are employed as a

means to this end. Questions of linguistic appropriateness, comprehensibility and concern for the psychology of the child witness are peripheral at best, and totally exploited at worst. The language format of cross examination has a linguistic life of its own, independent of the age or status of the witness. There are few modifications made to the format or language of cross examination when the witness is the child who is also the alleged victim of the sexual assault.

Whilst it is of great importance to accept the rights of the defendant it is also necessary to balance these rights, as expressed by cross examination techniques, against the linguistic rights of the child witness. A mismatch between language styles does little to either preserve these children's rights or to arrive at the ultimate truth in a case of law. The responsibility for matching lawyer language with child language lies undisputably with the cross examiner concerned. He/she is the question asker, and the child is the respondent. Because of this status the child has no opportunity to comment on his or her understanding of these questions. Their only instructed responsibilities are to tell the truth and answer the questions. Given this relationship between questioner and respondent, the opportunities for mismatch are common and are likely to go unnoticed, unless the child displays obvious signs of distress. The mismatch is a fact which has been established by the results of the testing programme undertaken, and the courtroom context and the relationship between the questioner and the respondent accounts for why it is rarely perceived by the protagonists in court. The only victims of this language mismatch are the child witnesses whose linguistic immaturity has not equipped them adequately to deal with language formats and styles which are quite outside their realms of experience. The children's general lack of confidence does not allow them to express their frustration at having to deal with questions, the language of which cannot be heard by them.

Another dimension to the issue of mismatch between the language of lawyers and the language of the child witness, concerns the cumulative effect of certain lines of questioning. The questions themselves may be linguistically quite straightforward. They might be asked in a simple way and involve no language features which would cause difficulties for the child. However, the emotional impact of these questions, the detailed memory they require to be recalled, the unusual ways in which the questions are posed and the rapid subject changes they demand, may all mitigate against the child being given time to answer these questions to the best of their ability. Mismatch is not just a matter of words and structures it is also an issue which includes a consideration of the child as a participant in a court dialogue and very few of the questions asked of children under cross examination take account of these fundamental rights.

In an attempt to explain some of the reasons for the mismatch between children's language abilities and the language used by lawyers in court it is necessary to isolate some of the features of lawyer language which are totally specific to the court situation. These features are then the descriptors of court language. These descriptors set it apart from everyday language and become the features which children, as relatively inexperienced language users, find the most difficult to hear, comprehend and respond to. We have isolated and described thirteen such features and they are the sole and particular content of Chapter Nine.

"Loaded language, like loaded firearms, can be hidden where least suspected, and the laws against concealed weapons do not apply". (Bolinger, 1980)

9 TACTICS & STRATEGY

One of the concerns often expressed by people working with victims of child sexual assualt is the devastating effect which court appearances have on these children. The alien environment, the male domination of the legal profession and the formality of the courtroom are frequently identified as forces contributing to the disquiet and distress of the child victim witness. Social workers, paediatricians and counsellors find it much more difficult however to articulate the features of language which mitigate against the rights of the child than to express what they know of the events and details surrounding their assault. Their anxieties about the strange language which pervades the courtroom are deeply felt but unclear in their expression. Most do not have the tools of linguistic analysis which are required to decode and translate this language. They recognise the effects which strange language has on the child witness. They can cite some of the more obvious examples. But they cannot verbalise the techniques and tactics which give courtroom language its own private flavour.

For many people courtroom language is a dialect. It has its own conventions and vocabulary which set it apart from the expected or everyday ways of communicating with each other. The communication gap created by this dialect difference is dependent on the language competence of the novice participant and the level of specialisation of the dialect which is being used. To understand this dialect it is necessary to collect samples of courtroom language, identify its most striking characteristics, and explore how these features produce confusion and distress in the minds of individuals confronted with this strange language for the first time.

The following features of lawyer language have been selected from the 26 transcripts collected for this study. They have been chosen for their discrepancy value. They display ways of asking questions which are outside the normal competencies of many adult users of the language, and which pose mismatch difficulties for children who are already under stress in court. They include some of the features which characterise the "Selective Lawyer" questions the children of the testing programme found difficult to hear.

The list of language features which are specifically court related is a long one. For the purposes of this study we have chosen to concentrate on only the following thirteen.

1. Use of negative
2. Juxtaposition
3. Nominalisation
4. Multifaceted questions
5. Unclear or confused expressions
6. Specific and difficult vocabulary
7. Unclear anaphora
8. Use of police statements
9. Quoting of the child's words
10. Quoting of other people's words
11. Repetition of previous response
12. Time, space and location questions in cases of multiple assault.
13. Embeddings

These features represent some of the strange aspects of lawyer language. They are departures from common usage patterns and therefore pose the greatest degree of difficulty for unsophisticated and young language users. Each feature identified is supported by examples. The elements of the mismatch between the speaker and hearer are explored as are the implications of this mismatch for the child victim witness.

1. USE OF THE NEGATIVE

Lawyer language is riddled with simple negatives, complex negative constructions and negative expressions. They are frequently placed in unusual positions, and their function is to break up and fragment the content of questions. Ostensibily they are included to add precision to the question, but their effect is confusing to those not familiar with their format. Negative expressions are common in everyday language. However it is unlikely that

anyone except lawyers use the negative form so widely, or in such particular ways. The cumulative effect of asking a large number of questions in the negative is that the child is required to refute or agree with a range of negative expressions. A conversation dominated by negative constructions requires constant transposing. The person on the receiving end of such a dialogue would begin to doubt the value of their participation in the interaction, not to mention the feelings of personal insecurity created by the constant use of this linguistic device. So it is for the child victim witness under cross examintion who not only has to contend with the pervasive effects of negative questions, but who is also confronted with this format expressed in unusual and strange language.

There are a number of patterns which determine the ways in which lawyers incorporate negative forms in the questions they ask. The grammatical structure of these negatives, and their position in questions, conforms to an unwritten set of rules which are outside the normal capacities and experiences of both adults and children. The first way in which the negative is used is when a negative expression is placed symmetrically between two pieces of information. The negative expression itself is totally lawyer specific and is a likely cause of confusion and mismatch, before any reference is made to the surrounding pieces of information that require processing. The example below is a model for this paticular use of the negative.

Q. "Now you had a bruise, **did you not,** near one of your breasts, do you remember that?"

A. "No."
(Transcript 12 years).

The insertion of the negative form "did you not" generates three questions in one question. It is unclear which part of the question the child should respond to. The child is confronted with three possible questions to answer. These are:

1. Did you have a bruise?
2. Was it near your breast?
3. Do you remember that?

In offering one response the child automatically excludes possible answers to the remaining two questions. It is impossible to link, with any degree of confidence, the child's "no" response to any particular part of the question.

The negative is also used as a rhetorical device in court. The negative construction is generally placed at the end of the question as the following example shows.

Q. "Now, this happened on a Friday, was it not?"
A. "Yes."
(Transcript 7 years).

The negative construction "was it not" is included as a rhetorical device at the end of the question. Its inclusion creates a number of options for the relatively inexperienced language user, who is trying to come to terms with the basic content of the question. Does the "was it not" imply that the question means that "it did not happen on Friday", or does it mean that "it did happen on a Friday". The child is confronted with the issue of how to answer a complicated question which is open to a variety of interpretations. It is not hard to imagine that the child contending with such a question would be unclear about its meaning. The level of complication spawned by this rhetorical question marker is unnecessary. It does not add to the weight of the answer given by the child, in fact it detracts from it. Confusing questions are likely to produce confused answers.

The issue of confusion becomes critical when the question being asked is itself full of options for response. The following example typifies how this confusion can become entrenched by the addition of a negative rhetorical tag.

Q. "When Mr. Smith asked you if you could remember anything about a towel you said you could not remember anything about a towel? The first time? Is that not right?"

A. "No."

(Transcript 15 years).

The rhetorical use of the negative form also appears without any other supporting question content. Frequently children are asked questions such as "Is that not true?" Everyone would find it much easier to answer the question "Is that true?" than to repond to its negative rhetorical counterpart. There is a higher likelihood of mismatch when the negative rhetorical form is used since it requires double processing before any answer can be given. Because of this potential for mismatch, there is also a greater likelihood that the response given by the child will be mismatched with the intention of the question being asked. The obvious sacrifice of clarity for the sake of rhetorical advantage does nothing to preserve the status of the child witness as an individual with the right to comprehend questions which they are being asked to respond to.

The following example illustrates another specific and prescribed use of the negative in court. It is representative of that class of question which is prefaced by an uncommon use of the negative. The subject of the action is placed after the negative form. This construction rarely appears in everyday language. It is most unusual to hear questions such as "Did not Susan go to McDonald's last night?" or "Did not Peter hit you with the stick?" The purpose

of including the negative form at the beginning of a question is to reinforce its status as carrying the primary meaning thrust of the whole question. However, because of its unusual form it is predictable that it will cause some immediate concern in the mind of the respondent. Its strangeness is immediately apparent.

Q. "Did not Phoebe have an accident with the horse about ten days before this, have some bruising. Remember that?"
A. "Oh yes, she had one just here."
(Transcript 11 years)

The insertion of "Did not Phoebe..."unnecessarily overloads the content of the question being asked. If the question were rephrased to bring it more closely into line with the language abilities of the child, it would probably appear in this form:

Q. "Did Phoebe have an accident with the horse about ten days before this, have some bruising? Remember that?"

The content of the question has in no way been prejudiced by the dismissal of the negative preface to the question. The ommission of the negative improves the linguistic precision of the question and changes it into a more comprehensible and manageable form for the child to deal with. It removes that element of linguistic mysticism which confronts the listener when unfamiliar and outdated forms of expression are used. It becomes a much more including way of obtaining the information required by the court.

To answer the question in its original form requires the respondent to think clearly about the implications of answering a question asked in the negative. In the example above the possible interpretations which could be imposed are:

1. Phoebe did not have an accident with the horse.
2. Phoebe did have an accident with the horse.

It is not a true negative but a rhetorical device used to reinforce the impact of the question. It is doubtful that this level of language sophistication falls within the repertoire of the child witness. If the child hears the "not" as a true negative rather than as a piece of rhetorical jargon, then the child has to decide whether Phoebe did have an accident or not. If she did, then the child will then have to decide how to best express this fact given the negative constraints of the question format. Does the child say "yes" or "no" to this part of the question. If the answer is "yes", what she is actually saying, in linguistic terms, is "Yes. She did have an accident with horse". If she answers "no", then she is saying: "No. Phoebe did not have an accident with the horse". If the child has acquired the linguistic subtelty to recognise the "not" as a rhetorical marker then the answering pattern would be reversed. The four possible options for response imply that this form of questioning is in appropriate if the conditions of precision and clarity are to be satisfied.

The inclusion of multiple negatives in questions make them difficult for even the most experienced language user to answer with confidence. It is not surprising to find that a thirteen year old child responded with "I don't know" to the following question.

Q. "And do you remember another occasion your father, or your stepfather, asked if you were playing sport, did you not say no?"
A. "I don't know."
(Transcript 13 years)

The inclusion of negatively loaded terms such as "deny" and "dispute" also pose problems for child witnesses as the following extract from a transcript of a child aged ten indicates.

Q. "Do you deny going to Cronulla Beach with Martin and your brother before November 1985?"

A. "What does deny ....."
Objection
Question allowed
Q. "Now back to Cronulla Beach. I am putting it to you that you and your brother on a school day went to Cronulla Beach with Martin around November it was certainly before December 1985? Do you remember that?"

A. "No"

(Transcript 10 years)

Questions loaded with unnecessary negative terms and forms will confuse the child, frustrate their attempts to tell the truth, and generally reduce their level of confidence in court. Given that child witnesses in cases of sexual assault are generally nervous, reluctant, upset and unsure of themselves in an adult dominated courtroom, the extra pressure created by asking quetions in ways which only serve to reduce clarity rather than enhance it, is an example of how language mismatch can be used to discriminate against the child. Reducing the comprehensibility of the questions asked diminishes the child's ability to answer.

2. JUXTAPOSITION

Everyday communication, in all its contexts, is generally characterised by the development of ideas. An effort is made to link these ideas. This linkage becomes more explicit when the people speaking to each other are relative strangers. In everyday interactions the unspoken conventions for changing

topics of conversation are accepted. There is generally an obvious link between what has just been discussed and the new item of conversation on the agenda. It is common to hear people say "...speaking of such and such ....did you read about .... did you know ... have you seen ...." If these cues are left out communication becomes disjointed and frustrated. Someone is inevitably left stranded by the privacy.

In court there is no provision within the language to establish these linkages. The cross examiner jumps from topic to topic and the child witness is expected to keep pace. The juxtaposition of questions seems inexplicable as topics are jostled randomly. The effects of this are most critical when intimate details of the child's alleged sexual assault are questioned, and then juxtaposed with general and more objective questions.

The rapid shift from the highly personal and traumatic to the details of acquaintances, for instance, as shown in the following example require the child to leap from one subject to another at an often alarming pace. It is debatable whether any of us are willing to move from a discussion of personal and troubling events in our lives to a discussion of what we are going to have for tea tonight without some sense of confusion. A change of topic requires the time to accommodate a new context for the interaction. The technique of juxtaposing unrelated topics excludes the possibility of any transition time. Without this accommodation time it is likely that the child will become disoriented, confused and unclear about the general line of questioning. The greater the frequency of these shifts from the personal to the objective, the greater the cumulative effect of the confusion will be.

Q. "That was after he had stripped you?"
A. "Yes."
Q. "And you had your legs together?"
A. "Yes."
Q. "And then you said he tried to put his finger in your vagina. Did he put his finger on your vagina or in your vagina?"
A. "In my vagina, in my vagina?"
Q. "Inside, you felt it inside did you?"
A. (No verbal answer)
Q. "Did he do anything else to you?"
A. "No."
Q. "Do you know Frank Murphy?"
(Transcript 14 years)

Frank Murphy has not been mentioned previously, and his identity in the case is not established subsequently.

In the example given above the pattern of questioning shifts from a highly personal recounting of the details of the alleged incident of sexual assault to a question about whether the child knows a particular person. The rapidity of topic change from vaginal penetration to known acquaintances requires a cognitive and contextual leap. The cross examiner has not provided the child witness with any adjustment time or any preliminary discussion about the subject change. However in court children are expected to jump from topic to topic at a speed determined by the cross examiner, with no cues as to how or where or why these questions are being asked. Little or no effort is made to set the stage for the child's processing of topic changes.

The following example illustrates starkly the kind of conceptual leaps demanded by the use of this particular technique. A thirteen year old boy, allegedly the victim of multiple assault, has answered fifty questions relating to the fine anatomical details of his assault. The topic suddenly changes, and then reverts back within the space of one question.

Q. "And that you say that he put his penis into your bottom about, what, fifty times?"

A. "Yes."
Q. "On that occasion when Mum went to, being the night that Mum went to the Youth Group you were at Clareville?"
A. "I have made a mistake there, it wasn't Clareville, it was West Hampton."
Q. "It should be West Hampton. You did not see the defendant at any time when he put his penis in your bottom, did you?"

A. "What do you mean?"

Q. "Well you did not see his penis go into your bottom?"

A. "No."

3. NOMINALISATION

Nominalisation refers to the language process where an action is objectified so that neither the agent nor the recipient are mentioned. There is a great deal lost in the translation.

The environmental clearance campaign that was instituted in the pursuit of public safety is possible as a claim only because someone previously talked about the cutting down of the trees as being an insurance company requirement. Both the claims are a long way from their alternative expression which exposes the relationships involved as in "I am cutting down the trees because the insurance company manager told me I have to".

Nominalisation in the courtroom is often achieved by changing the verb in a piece of (spoken) text into a gerundive. For instance if the text read "Susan hit

Bill's leg" it could be nominalised by changing the verb "hit" into its gerundive form "the hitting" and the piece of text would then read "the hitting of the leg". Susan and Bill are implicitly removed from any discussion of this leg which has been hit. We now have no prejudices about who did the hitting and whose leg it was that actually got hit. Both the people in this example have been effectively removed from the discussion as have any decisions about the consequences of the action. It is a less personal statement which has put a distance between the recipient of the action and the person responsible for the action.

"Linguistic theory indicates that nominalisations are more difficult to process then their equivalent verb forms (McCawley, 1970). In the Charrows study of (jury) instructions, nominalisation were not well understood. The mean percentage of correct replies for instructions containing nominalisations was 29 per cent, as compared to nearly 40 per cent for all instructions not containing them. Moreover, removing nominalisations significantly improved comprehension of instructions." (Danet, 1980)

The results of this research are more significant when one considers that children as young and inexperienced users of the language are being confronted with linguistic forms which pose comprehension problems for adult language users. The impact is even greater for the child when one considers that the status of a juror in the courtroom is ostensibly that of objective observation of the proceedings of the case, while the child's status as the alleged victim and then primary witness exposes her to interrogation, impeachment and disputation.

This technique is used in court by cross examiners in an effort to preserve the status of their client. The purpose of this line of questioning is to maintain objectivity. Functionally a child confronted with nominalised questions as they appear in the examples below feels discounted and disenfranchised from the events which they are being questioned about. Objectivity is a difficult mode for adults to operate in when discussing personal problems or shattering events. This is much more the case for children who are being asked to give details of their own sexual assault as though they had been watching it from the vantage point of a surveillance satellite.

Q. "Did you have to step out of them (pants), what happens as regards that?"

A. "Yeah I stepped out of them a bit."
Q. "Now did you resist that in any way?"
A. "Mmm."
Q. "The actual taking down of the pants?"
A. "A little bit, I was scared."
(Transcript 12 years)

Q. "She was laughing. Well you do not think too much about that yourself did you? You were not troubled by that were you?"
A. "By what?"
Q. "The massage of the breast."
(Transcript 12 years)

Q. "Was there ever touching between you or by Vincent Baines of your boob, ever?"
A. "Only once."
(Transcript 11 years)

Q. "Now just stop there. Did you tell the police what is in that statement about the matter, about the touching of the boobs?"
A. "Yes I told her."
(Transcript 11 years)

Q. "How many times did it happen this tickling of the vagina?"
(Transcript 10 years)

Q. "He never hit you any time or about any time that these particular acts that you have spoken of, the sucking of the penis or the putting of the penis in your bottom, occurred, is that right?"
A. "It happened, like when that was not happening, yes. I'd get hit, yes."
(Transcript 14 years)

In the examples offered above young children, unused to the sophisticated distancing device of nominalisation, are being asked to answer questions about the details of their assualt as though they had been watching rather than participating. Given the highly personal and traumatic aura which surrounds incidents of child sexual assault, the process of nominalisation can only be construed as adding to the language pressures exerted on the child in court.

4. MULTIFACETED QUESTIONS

Perhaps one of the most obvious examples of specifically lawyer language is embodied in those long and complicated questions which are often asked of children in court. They consist of convoluted preambles, confused centres and rhetorical endings which invite no response. These questions produced the highest degree of mismatch in the testing programme. This is not surprising when the amount of information processing required by some of the following examples is considered. Their sense would defy the most articulate of language users.

Q. "Now do you say that whatever it was that happened, or whatever it was that happened to Dianne, you were in the toilet at the time and you obviously heard something, did you?"

A. "Yes."
(Transcript 11 years)

Q. "Well I know, I understand what you say you have been talking to her today but you see what I am asking you is this, that statement suggests that you said those things that you now say are wrong to the police. Now did you say it to the police or did you not?"

A. "I don't know."
(Transcript 9 years)

Q. "So the first time you got smacked for telling stories you still told stories and got smacked again. So it didn't make any difference to whether or not you told any stories did it?"
A. "No."
(Transcript 7 years).

Q. "And did your mother ever say to you that if somebody asks you the questions I am asking you, you should say that we didn't say what was going to be said?'
(Transcript 10 years)

The examples of multifaceted questions given above reflect their common form. Frequently they begin with a word such as "well", "now", "so" as if they are the result of a set of experiments from which an hypothesis has been extracted. They contain a number of ostensibly already established facts, presumably offered by the child witness at an earlier state of the proceedings and they are finalised by rhetorical questioning markers which invite no response because of the tone in which they are delivered to the child. Long and complicated questions are difficult enough for the child witness, but when they are accompanied by rhetorical devices the child has no options for reply. Rhetorical questions are display boards for other people's information and have little to do with the answer given by the respondent.

Multiple option questions are one of the most common forms in which multifaceted questions appear in the cross examintion of the child victim witness. In these cases the child is confronted with a question which contains a number of options. However the instruction to answer "yes" or "no" and the requirement to keep responses short and to the point reduces the negotiability which the child has in this context. The child could conceivably disagree with a number of the options offered by the cross examiner in any one question, or agree with a number of the options, but the child does not have the opportunity to express this. Considering that everything that the child says can be called back at a later stage, this is a strategy which creates oral evidence of a particular kind which cannot be gone back on in the proceedings.

Q. "Okay after Mum had gone to work, did you have tea before she went or did you have tea after or what was the set up?"

A. "Before."
(Transcript 12 years)

The multiple option questions are frequently characterised by long strings of words with complex interrelationships existing between the ideas expressed in them. It is quite conceivable that the child witness may agree with some of the propositions contained in any one question and disagree with others, and yet their is no provision within this mode of questioning for the child to express these views.

Q. "The only reason that it did happen was because you were scared of what might happen if you didn't allow it?"

A. "Yep."
(Transcript 12 years)

Q. "And you told the policeman that Daddy said "Mum's coming". Now that is not true is it. Do you remember telling the court here just a few moments ago, you said "Mum's coming". That is true is it not?"

A. "Yes."
(Transcript 7 years)

Q. "Well, did he take hold of you and make you do anything? Did he grab hold of your hand and do anything with your hand?"

A. "No."
(Transcript 14 years)

Q. "And is this the position Peter, that whenever the defendant put his penis in your bottom, as you say you were always on the bed and Steve was out of the bed?"
A. "Yes."
(Transcript 14 years)

Q. "Now after your father tried to get you to put your willie into his bottom, you say that he put his willie into your bottom?"
A. "Yes."
(Transcript 11 years)

5. UNCLEAR OR CONFUSED QUESTIONS

One of the sources of that immediate sense of intimidation which many members of the community experience when confronted with anything legal is the apparent specificity of the language used in these contexts. The public are usually generous in their interpretations of language and willing to tolerate shades of meaning in the language which they use and respond to. The law

operates according to a completly different set of principles. Words and phrases are the embodiment and expression of the law. Meanings and interpretations have been proscribed by generations of legal argument, precedents and established conventions. Legal language is bound by these histories, with specificity, precision and established questioning protocols being the hallmarks of courtroom interactions. It is therefore surprising to find examples of badly phrased, confused, unclear and indecipherable questions being addressed to young children in court. There is no obvious pattern underlying this lack of clarity, but if the following examples are an accurate representation of this class of questions the child victim witness will experience a great deal of difficulty in decoding their meanings.

Q. "Were you the first to go into the shower that, after tea that night or not?"

A. "Yes."
Q. "At any stage whilst you were in the bathroom did he ever enter the bathroom that previous week?"
A. "Only about two or three times, not more than that."

(Transcript 11 years).

Q. "Well I know, I understand what you say you have been talking to her today but you see what I am asking you is this, that statement suggests that you said those things that you now say are wrong to the police. Now did you say it to the police or did you not?"

A. "I don't know."
(Transcript 10 years).

6. SPECIFIC AND DIFFICULT VOCABULARY

Every profession has its language conventions which are particular to it. Science, medicine, engineering and the law are examples of professions which use vocabularly and technical terms which are totally particular to the discipline. Within the law words are the display boards of guilt and innocence and their usage is controlled and pre-determined in a totally specific way.

Anyone who has been confronted with a legal document knows that it needs the translation skills of a solicitor to allow the reader to come to terms with the actual content of the document. Unlike other contexts where language is used, each word and phrase has generally only one meaning. Language does not have the flexibility and open ended interpretation which most of the rest of the world is used to. It is a private language with its grammar and its meanings arrived at by tradition and generations of usage. Children in court as relatively inexperienced language users find the specificity of language disconcerting and very unlike their experiences of the rest of the world. The intensity of this mismatch discriminates against them.

The specificity of language usage is determined by unwritten formulae and tradition. The novitiates in the court context have not got the opportunity to express their lack of comprehension. The pace, the format and the protagonists allow no time and space for those who do not comprehend. Few adults and even fewer children reply to a question by saying that they do not understand or by asking for the question to be repeated. There is an underlying expectation in courtrooms that answers must be given even if they are "I don't know".

There are a number of different kinds of linguistic specificity reflected in the language of the courtroom. The first of these is the use of terms whose meaning is understood only by those acquainted with court procedures. These may be individual words or phrases. These pieces of legal terminology are used to ostensibly clarify interactions and procedures, to argue points of law and to preserve the already agreed format for the conduct of cases.

Q. "Now the envelope, I'll withdraw that, the park that you were in, has it got a fence around it".

This example was taken from the cross examination of a seven year old child. The use of such terminology implies that the child is expected to understand the meaning of "I'll withdraw that". In the context of the courtroom this piece of language has a totally prescribed meaning, that of taking back the immediately preceeding piece of text. It is questionable whether it is realistic to expect that a child should also have this understanding. If they do not know how can they be expected to reference the term "that" in any way? How do they know what the "that" refers to, assuming that they can assign a meaning to the word "withdraw"?

"I suggest to you that all of this is figment of your imagination".
(Transcript 7 years).

Q. "Well Peter didn't stay and you ran away, you ran away, I mean, I withdraw that. You didn't run away and Peter stay. You say Peter ran away and you stayed?"

A. "Yes Peter did run away."
(Transcript 7 years).

Q. "And he told you something did he?"
A. "Yes."
(Transcript 9 years)

Q. "And is it possible that when he came into the bedroom it was about 9 o'clock and not just a few minutes after 7 o'clock?"

A. "I've forgotten."

Q. "You have forgotten. But it is possible is it not that it was 9 o'clock?"

A. "Yes."
(Transcript 10 years)

Q. "Do you have any memory, any recollection of your Uncle Arthur having a conversation with you about looking after his pet while he was away?"

A. "No, No."
(Trancript 10 years)

Q. "You went for a swim there I am putting to you at Cronulla Beach?"
A. "No."
(Transcript 10 years)

Q. "You went to, went and got into the car outside your home, I withdraw that, whereabouts in relation to your home, did you get into the car on this morning?"
A. "Well on the, when ?"
(Transcript 10 years)

The above examples mean something specific and formalised in a courtroom, but to a novitiate they appear difficult to understand. If we look at the first example above, "You told His Worship earlier", we can appreciate some of the difficulties a child must experience in coming to grips with some of these precisely defined terms. The child witness has in fact not told His Worship anything. The child has been answering questions put to him or her by either the prosecution lawyer or the cross examiner. The number of interchanges between the child and His Worship are very limited and are mostly to do with the comfort of the child rather than the gathering of information. It is almost certain that the child witness does not understand the role of the magistrate or the judge which is reflected in this phrasing. The child is unlikely to be aware of the responsibilities which a magistrate or judge assumes in a courtroom nor are they likely to understand the displaying roles which both the prosecution and defence are obliged to fulfill. This type of terminology will only confuse the child unless it is clearly explained to the child witness prior to his or her appearance in court. Unless this is done this type of language is inappropriate because it makes no sense, except as a tactic to impede meaning.

Similarly the other examples cited above fall into the same pot of confusion. Their meanings exist only in the province of the courtroom and their privacy of interpretation excludes the child, yet the child is expected to answer questions which include such expressions.

Some questions asked of child witnesses in court contain individual words which are appropriately used with sophisticated adult language users but which have little meaning when they are contained in questions directed to young children. The following display some of these vocabulary mismatches.

Q. "And if that statement was made in the latter part of April?"
(Transcript 11 years)

Q. "See, Daddy did not interfere with you on this day, did he?"
A. "No."
(Transcript 7 years)

The prosecutor intervened at this stage and asked the following questions.
Q. "The last question that Mr. Smith, this man here, asked you, was that Daddy did not interfere with you on this day. Do you know what he meant by that?"
A. "No."
Q. "I see, and you know what Mr. Smith means when he says interfered with you?"
A. "No."
(Transcript 7 years)

Q. "Do you deny going to Cronulla Beach with Martin and your brother before November 1985?"
A. "What does deny ....."
Objection
Question allowed
Q. "Now back to Cronulla Beach. I am putting it to you that you and your brother on a school day went to Cronulla Beach with Martin around November, it was certainly before December 1985? Do you remember that?"

A. "No."
Q. "Are you denying that it happened?"
A. "What does deny mean?"
Bench: "I wonder if she understands the word deny?"
(Transcript 10 years)

Q. "I am sure he might have been, but I am suggesting that notwithstanding where your father was you telephoned the house where Max was living, is that true?"
A. "No."
(Transcript 10 years)

The words used in these questions which would have caused some vocabulary problems for the children are "latter" (child 11), "interfere" (Child 7), "deny" (Child 10), "notwithstanding" (Child 10). Even if they had heard these words used before coming to court it is unreasonable to assume them to have

these specific meanings as part of their vocabulary. Strange words with unknown meanings and pieces of specifically legal language confront the child witness, as they try to come to terms with the content of questions.

7. UNCLEAR ANAPHORA

Despite the ostensible precision and clarity of lawyer language there are a number of clearly identifiable areas of sloppiness. In an attempt to preserve the formality of the language used in court, lawyers often sacrifice brevity and clarity for complication and confusion. This is reflected in the examples given in the section immediately above. Paradoxically lawyers also omit whole chunks of information on the assumption that the witness has immediate access to the topic which is under examination. They replace these chunks with pronouns or other referencing markers in the expectation that the respondent will be able to recognise the item which they are referring to. These types of references, to things mentioned earlier, are known as anaphora.

Anaphora is a term which is used to describe references we make in language to things we have said at an earlier stage. It is a type of linguistic shorthand designed to remove the necessity to repeat chunks of language by using pronouns to stand for these chunks. For example the question:- "Did you hit the boy with the large red handled hammer with a tempered steel head?" Would probably be streamlined in repetition by removing the chunk "large red handled hammer with a tempered steel head", and replacing it with the pronoun "it". Provided that the original question has been asked, and the refined anaphoric version was repeated next in the sequence, there would be no confusion about what the pronoun "it" referred to. It would be clear to the respondent that the question "Did you hit the boy with IT on Tuesday or Wednesday?" was a question relating to the hammer and when it was used.

However, in the courtroom, anaphoric references become confused and are often unclear. The main cause of this confusion is the difficulty involved in establishing the actual referrent implied in the anaphoric replacement.

Q. "Well you are not sure whether you said those things to the police which are wrong?"
A. "Mmm".
(Transcript 11 years)

It is very difficult, even with the advantage of time for reflection and the printed transcript, to establish exactly what the "those things", anaphorically referred to in this question, relate to.

Similarly, the following question contains an example of unclear anaphoric referencing.

Q. "So, you told us that you don't remember, do you remember saying that a moment ago?"
A. "Yes."
(Transcript 10 years)

The phrase "you don't remember" is free floating, it is not attached as a response to a particular question. The only guide to the child trying to match her response to a question asked previously is the equally vague time frame given "a moment ago". It is obviously very difficult to answer questions of this type when the anaphoric references are used with little precision and with few language markers to indicate their reference points. The content of the questions may be clear to the speaker but that content is not translated into manageable terms for the child witness in court.

8. USE OF POLICE STATEMENTS

As well as asking the child witness about evidence given at an earlier stage of the case the cross examiner devotes a great deal of questioning time to the content of the police statement which the child made after the disclosure of the alleged sexual assault. Time delays in court proceedings mean that this statement may have been made between three months and two years earlier. If the case of alleged assault proceeds through the court system from Committal to District Court and further, the time period involved increases accordingly. A child may have been allegedly sexually assaulted and made a Police Statement when they were 7 years of age. Two years later, at age 9, they are questioned in court about the fine details of this statement.

A day is a long time in politics and two years in the life of a child is an eternity of experiences and vital learning. Everything that we know about child development highlights the fact that change typifies emotional, physical, social and cognitive growth at this stage of any person's life. The differences between a 7 year old child and a 9 year old child are much more observable in all spheres than the difference between a person at age 32 and age 34.

The rapidity of change is clearly seen in the types of language structures, vocabularly and uses to which language is put by the developing child. Ways of saying things, the words which the child uses and the concepts which underlie these expressions develop and change rapidly. Mastery of language does not magically appear; it is a process which continues long after the child has acquired the ability to speak. It is a dangerous assumption to make that because children are able to express themselves that they have a competence which parallels that of the

mature adult speaker. This is clearly not the case since some facets of language maturity are not reached until late adolescence.

These issues of child development generally, and linguistic development specifically, are overlooked by many courtroom protagonists. The language of cross examination in particular takes little account of the characteristics of the emerging languge user. Structures, vocabularly, tone and context reinforce the status of the child as an inferior and immature speaker of the language. These language differences between the developing and the developed speakers are entrenched and strengthened by the ways in which questions are asked. Few concessions are made for the learner. The child witness is expected to conform and then respond to an unknown pattern of language without the prior experience, the developmental capacity or the linguistic maturity necessary to understand it. Children are being linguistically punished for being children.

Ideas about child development are overlooked during cross examination in many subtle but destructive ways. The extensive citing of Police Statements by cross examiners and the uses to which the children's answers are put reflect a dismal lack of appreciation about childhood cognition. All experience and learning is accommodated in some way by the developing child and to return to children's words which were written down according to a prescribed formula for admittance into the court, and which were said perhaps two years earlier under circumstances of stress and trauma denies the possibilty that the child has changed. The legal magnifying glass which is used to scrutinise the child's words, as recorded by the Police, closes in around the words alone. Given the childhood context of constant change and development it is unreasonable to expect anything other than confusion and distress to be the response to detailed questions about scripted events which occurred so long ago in the child's life.

Child witnesses in court generally attempt to answer all the questions which they are asked. They take their instructions from the magistrate or judge most seriously. The following example shows how the juxtaposition of answers given in the 'here and now' and answers in response to questions about a Police Statment given at a much earlier stage can be used to imply that the child is lying about the details of the alleged assault.

Q. "Just have another look at the statement will you, and have a look on page 2 of your statement. You see there is nothing in there about telling Lisa on the Thursday night that he had touched you is there?"
A. "No"
(Transcript 12 years)

It is understandable that the child witness may feel as though the cross examiner is trying to trick her, or confuse her, or imply that she is not telling the truth. The question, preceeding the one above had been about who this child had told about the alleged assault. The preceeding six questions had dealt objectively with who the child had told. The police statement was then produced and implications drawn that she was lying because she had not mentioned these incidents in her police statement. It is doubtful that the child appreciates the legal weight attached to a Police Statement. Neither does the child undertstand the implication made by the cross examiner here, that if information is not included in the Police Statement it cannot be considered to be true. The child is simply answering questions put to her to the best of her ability. The legal subtleties of relatively weighted pieces of evidence are not within the experience of a twelve year old child. She has fulfilled her obligations. She has answered the questions and the only response she receives is the imputation that she is not telling the truth. These dynamics are unwritten, unexplained and only serve to confuse and distress the child. They may serve the purposes of the cross examiner but they certainly do not include any consideration for the status of the witness who feels trapped by her expressions of truth.

The following example shows how one child attempted to explain why a particular piece of information was not included in her statement. The cross examiner's response indicates that he is not really interested in the child's reasons for omitting this evidence, but that he is more involved in displaying the child's ostensible inconsistency about the details of the alleged assault.

Q. "Did you say this that you did not tell that to the police?"
A. "Yes I told it to her before 'cause I didn't have a chance to tell it to her, I told her ...."
Q. "Now just stop there ....."
(Transcript 11 years)

There is a common pattern for integrating the evidence contained in a child's Police Statement with the other evidence obtained from the child witness. The operation of this pattern reflects no obvious concern for the age of the child, their possible level of development or their general emotional well being in court. Children frequently break down in court and their distress is usually associated with this part of the proceedings. The following example shows how the juxtaposition of police statements and current evidence is orchestrated by a successful cross examiner.

It concerns an eight year old boy allegedly assaulted twice by his stepfather. According to the information available on the transcript the alleged assaults took place when the child was 5 and 6 years old. The strategy goes something like this:

1. Establish that two incidents of assault took place.
2. Establish the time between the two incidents in the child's mind.
Q. "How long after the first time did he ask you to go upstairs the next time?"
3. The child replies understandably that he does not know.
4. Cross examiner suggests some time options.
5. Child chooses one of these options.
6. Details of abuse are elucidated.
7. Introduction of the police interview.
8. Signing of the police statement by the child confirmed.
9. Q. "And you say that you haven't seen any mistakes is that right."
A. "Yeah, no mistakes."
10. Document handed to the child.
11. Goes over preceeding evidence about details of the alleged assault again.
12. The crunch ..... quotations from the statement which directly contradict what the child has been forced into saying.
Q. "So what's the position, did it happen the next day or did it happen the next year?"
A. "I said the next day but then I must be wrong if it said on my statment".
Q. "You made a mistake?"
A. "Yes"
Q. "A big mistake, is that right?"

CHILD BREAKS DOWN
(Transcript 8 years)
CHILD RETURNS

Q. "You see those things I've been putting to you Peter, they're just too big to be a mistake aren't they?"
A. "I don't know what you mean"
Q. "What I'm saying is you're not telling the truth?"
A. "I'm telling the truth".

The number of questions which were asked relating to this issue is one hundred and one. Yet if we refer back to the response to the first questions asked about the time period between the two alleged incidents the child initially replied "I think, I don't know but I just know that he told me to go upstairs".

Q. "Well do you know how long, was it a couple of days later or a week or months or a year or what".
A. "I think it was one day, I'm not sure".
Q. "You think it was one day?"
A. "Yes, I'm not sure."

The child had admitted that now he could not remember the time period involved yet it was used as a given fact by the cross examiner. The child's lack of confidence in remembering the time period involved was used to call all of his evidence into question.

The eleven year old girl, cross examined in the following extract from a transcript, was asked thirty seven questions based on a Police Statement made when she was ten. The pattern of questioning culminates in her confusion and breakdown.

Q. "Now just have a look at paragraph 8 again. Towards the end."
A. "No"
Q. "Read paragraph 8".
A. "It's not.."
Q. "To yourself. Now the contents of that paragraph are not true, are they?"
A. "No."
Q. "And did you tell the Police the contents of that paragraph?"
A. "Some of it."
Q. "Well, you tell us what you told the Police and what you did not tell the Police in that paragraph?"
A. "I told her after he had a look at my boobs, but not rubbing me on the fanny."

Q. "Yes."

A. "Didn't tell them that I asked him for my pants, he didn't have them, he'd been holding them in his left hand, and he didn't have them in this left hand. These pants have got. I've got the pants, but he didn't have them....the girl looking through a mirror on them and a flower pot but ....."
Q. "Speak up, speak"
A. "A little girl looking through a flower pot, with a flower pot and he gave them back, but he didn't have them anyway. I said 'Geez you're rude Bob" but I didn't say, and he goes 'Why?' And I said 'Cause you're rude.' He left the bathroom. That last bit I didn't say."

Q. "Well did you say 'Geez you're rude Bob'. did you say that?"
A. "No."
Q. "Did you tell the Police that you had said that?"
A. "No. I don't know. I can't remember."
CHILD BREAKS DOWN
(Transcript 11 years old)

9. QUOTING OF CHILDREN'S WORDS

Every word spoken in a courtroom has its particular worth. The line "....anything you say may later be used in evidence in court" has a particular relevance to the child victim witness in cases of sexual assault.

Frequently what the child has said in response to one question is used in another context either to verify the particular piece of evidence or to rephrase the evidence and approach it from a different angle.

Q. "And is that because of what you told us that he threatened to, not just bash you, but bash, I think your words were, all of you?"

A. "The family."
Q. "Remember that you told us before the lunch break that you had never been out with Martin before this particular day, 8th of November, do you remember saying that, before lunch, do you remember or do you not?"

A. "No."
(Transcript 10 years)

Q. "Do you recall just before lunch saying to the court that you had your tracksuit pants on when you sat on his lap?"

A. "No I said I had my tracksuit pants off."
(Transcript 9 years)

Q. "On the second time he asked you you said he used these words 'Come on please take your pants off' do you remember saying that?.
A. "Yes"
(Transcript 9 years)

Q. "Do you remember when you were being asked questions by the Sergeant, what was said, you said that your father said: 'He loved me' that's all he really said. Remember that?"
A. "Yes."
Q. "You didn't tell the Sergeant that your father threatened you, did you?'
A. "No."
Q. "Something you forgot?"
A. "No, because when I was telling him about the first time, when I finished telling him then I said that he threatened me then, and I said that he threatened me all the other times too."
Q. "Yes but that was right at the end of the questions that the Sergeant asked you, when the Sergeant asked you was anything said on this particular occasion, you didn't say anything about the threats did you?'
A. "No."
Q. "Why not?"
A. "Because I thought he knew, by telling him last time."
(Transcript 11 years)

These are not questions about what happened, but about what was said about what happened. Children find it difficult to wade through this web of ambiguity. These insertions of direct quotations of previously given evidence serve to fragment questions. The child is also being asked to comment on what can be termed a meta linguistic assertion. They are not being asked a direct question but rather they are required to think about something which they have said on a different occasion in response to a totally different question. They are being asked at least two questions under the guise of a single question.

If we return to the second example given above we see the child is being asked about both remembering evidence given before lunch as well as the actual content of that evidence.

Further, the final part of the question "do you remember or do you not" requires only a 'yes' or 'no' response.

The wisdom of asking two questions in one is again called into question as is the validity of asking the child to accept or refute evidence given at an earlier stage of the proceedings. If we consider the actual number of questions which a child is asked in any one session in court we realise that the child is being asked about a response to one or two or three questions out of a possible five hundred. The pace of interchange between questioner and respondent places a great deal of strain on the child's memory for detail and time sequencing as does asking specific questions about responses given at other times in the court hearing. Many articulate and confident language users would not be able to accurately and truthfully answer questions about interchanges which had occurred two to four hours earlier in the day.

Returning to the second example given above the child may in fact not remember that she answered in this way "before lunch", and therefore she would be obliged to answer "No" as she did. The implication is not that she did not say it, or that it wasn't true, but only that she did not remember this one response out of her preceeding five hundred. However, this leeway is not tolerated and her "No" response can be used by the cross examiner to call her evidence into disrepute. Her credibility is diminished not by her ability to substantiate her story, but by her inability to respond to the connections imposed by this form of questioning.

10. QUOTING OF OTHER PEOPLE'S WORDS

Another feature of lawyer language which appears in the cross examination of child witnesses in cases of sexual assault is the quotation of other people's words incorporated into the questioning format. These questions are often prefaced by the words "I put it to you" or "I suggest to you" and are assertions on the part of the cross examiner rather

than questions directed to the child witness. The subtle distinction between a rhetorical assertion and a question is a difference which children cannot be realistically expected to appreciate. This device allows the cross examiner to introduce information which might otherwise be inadmissable, but it does so at the expense of the credibility of the child. It is unrealistic to expect the child witness to recall the exact words of conversations which took place perhaps two years earlier, yet these are the questions which they are being asked. Since most of these questions only offer the possibility of a yes/no response the child is further constrained. Their capacity to negotiate about the content of the quotation is refused by the structure of the question as the following examples illustrate.

1. Q. "And I suggest to you that when you got on the bike Daddy said 'Look get off' you're not allowed to ride it in the house'. Is that true'? (Transcript 8 years)

2. Q. "I put it to you that those conversations on the Monday and Tuesday that I have spoken to you about he said to you 'I am working'. What do you say to that?" (Transcript 11 years)

3. Q. "And when was it that Sue said 'Did he touch you?" was that in the bathroom or where?" (Transcript 12 years)

4. Q. "And when he said 'I want you' did you not then realise what he might have wanted you for?" (Transcript 12 years)

5. Q. "All right. But you gave this evidence that after you gave the evidence that you were sitting on the floor and he was crying and he said 'I'm tired', you said 'I thought I could really trust him' and it was after that he said 'I'm going to have breakfast now'. Do you agree that you gave evidence in that form?" (Transcript 14 years)

6. Q. "Sometimes your Uncle Fred would say: 'You've got to wear your school uniform', or your mother, is that not right?" (Transcript 14 years)

7. Q. "And I put it to you there that you had, when Mr. Brown was there, you had some conversation with him to the effect 'I know you, you're my cousin'?" (Transcript 15 yers)

8. Q. "And I put it to you it was actually Timmy Morris who said 'Well they must be in bed or they're not home', and not the defendent Smith?" (Transcript 15 years)

The apparent precision of the words quoted in the questions above can be more mystifying to the child witness than clarifying. The fact that they may be part of the hypothesis testing technique used by the cross examiner is not an idea which would be easily understood by the child witness.

11. REPETITION OF PREVIOUS RESPONSE

Children's responses to questions are often repeated by cross examiners. The following two examples illustrate how this is done.

Q. "And is that because of what you have told us that he threatened to, not just bash you but bash, I think your words, all of you?"

A. "The family."
Q. "The family?"
A. "Yes."
(Transcript 12 years)

Q. "December last year, and was that a weekend or a weekday?"
A. "I can't remember."
Q. "Cannot remember. Were the circumstances much the same then as they were on this last occasion can you remember?"
A. "Yes, it was the same just about every time."
(Transcript 8 years)

The repetition of a previous answer will appear as a preface to another question or as a separate question. In the first example given above the repetition of the answer offered by the child, "the family" by the cross examiner reduces the impact of the child's answer. The lawyer repeats the child's answer as a question not to check the child's response because it is a clear and understandable answer, but to hold the child's answer up to more public scrutiny and possible disbelief. In everyday conversations the same practice occurs. For instance imagine a conversation between two fisherman about a third fisherman.

Harry: "Fred caught a five kilo trout."
Pete: "A five kilo trout?"
Harry: "Yes a five kilo trout."

Pete's repetition of Harry's words are more likely an expression of disbelief than they are an expression of amazement or interest. The fact that Harry sticks to his story in his final response may mean that Fred really did catch a five kilo trout but Pete's question has served the purpose of introducing some element of doubt into the conversation about Fred's capacity and skill to catch such a fish. Similarly in a courtroom the repetition by the cross examiner of clearly expressed responses given by the child witness casts some doubt on the accuracy of these responses.

In the second example above the child's negative reply of "I can't remember" forms the preface to the following question. In terms of the rest of the question the inclusion of "cannot remember" by the cross examiner has little relevance, and has no relationship to the topic of the question which is

"were the circumstances much the same then as they were on this last occassion, can you remember?" The inclusion of "cannot remember" is prompted more by the need to reduce the credibility of the child than by any intention to obtain information relevant to the case.

12. TIME, SPACE AND LOCATION QUESTIONS IN CASES OF MULTIPLE ASSAULT

Cases involving multiple incidents of assault pose a particular set of problems for the child witness. Cross examination is not renowned for its concern for establishing the context within which such questions are framed and this becomes critical when questions about different times, details and locations for assaults are asked. The mismatch between the precision demanded by the court and the whole set of painful experiences which characterise the evidence of the child witness, who has been assaulted consistently over a long period of time, is reflected in the language and structure of these questions.

In instances of multiple assault the law selects one or two incidents which are the substance of the prosecution case. These two incidents may be representative of a hundred such assaults in the child's mind, and yet the child is expected to remember with total accuracy the time, location and details of just this select few. This selectivity is endorsed by the cross examiner who deals with the two incidents in the most precise detail. The following examples show how inadequately the context for these questions is presented and how the language used by the lawyers serves to reinforce the confusion already firmly established in the mind of the child witness who has been the victim of multiple assaults.

Q. "I'm sorry, you might not understand me, the first time and then it's finished, how long until the next time that your father put his penis in your vagina?"
(Transcript 7 years)

Q. "But what you've told us here today that the first time when you and Peter tricked him to go upstairs and the second time is when he told you to go upstairs, now they're different aren't they?"
(Transcript 8 years)

Q. "Now which class were you in when Dad asked you to go upstairs, were you in first class for the first time or first class for the second time?"
(Transcript 8 years)

Q. "I mean if something happens today and something happens tomorrow, you're not going to say they're about a year apart are you?"
(Transcript 8 years)

Q. "Well when you were in first class for the first time and when you were in first class for the second time those are a year apart aren't they, not one day, one whole year at least, that's right isn't it?"
(Transcript 8 years)

Q. "When was the last time he did this to you before the one we have been speaking of? We have been speaking of just one in February, obviously, when was the last time he interferred with you before that?"
(Transcript 12 years)

Q. "And on none of these 11 or 12 occasions, prior occasions was, to use the expression, was he ever sprung?"
(Transcript 12 years)

Q. "And you say this, a similar situation had occurred on I think you said 11 or 12 previous occasions over a number of years?'
(Transcript 12 years)

The examples offered above reveal a passion for details of time, yet the ability to describe a time frame must be related to a context and this is obviously absent from all the questions. Similarly the tone and content of these questions makes no allowance for the developing sense of chronology of the child witness. These questions require an adult perception of time and events which is inappropriately imposed on the child witness. Under circumstances of minimal stress where the event is not characterised by fear, physical pain or trauma children have difficulty accurately establishing a time frame for incidents in their lives. Given the emotional damage associated with multiple cases of assault, it is even more unrealistic to devote time and energy to the process of fine questioning about temporal, spatial and physical aspects of abuse. The only predictable responses will be those of confusion and distress aggravated by poorly constructed and restrictive questions.

The child victim of multiple assault has the ability and clarity to discuss the details, but the questioning style encapsulated in the above examples prevents the display of this clarity and only serves to reduce the credibility of the witness by imposing an adult model of the world on the experiences of a child.

13. EMBEDDINGS

The language which cross examiners use is sometimes very compact and compressed. They have the ability to squeeze a lot of information into one single question. This was made clear earlier in this chapter when the confusion created by mutlifaceted

questions was discussed.

However there is another dimension to these compact questions which requires exploration, because not only are they multifaceted in their content but their syntactic structure mitigates against a clear understanding of them by individuals not totally immersed in the language style of the courtroom.

The feature which makes these compact questions so difficult for the novice to understand is the fact that they do not maintain the normal pattern of speech conventions. They are more like their Latin models rather than anything characteristic of normal English speech. For this reason they pose a particular problem for the child witness who is unlikely to be familiar with either their history or form.

The technique which is used to compact information within any given utterance is referred to as embedding. As the term implies it is a process of wedging in more content and connections in a piece of language by the use of certain syntactic devices. For example the question "Did you see the dog run over the road with a bone in his mouth, looking everywhere for a place to bury it?" contains the embedded constructions "with a bone in his mouth" and "looking everywhere for a place to bury it". The most common pattern of embedding which occurs in English speech is reflected in that example and is right branching. The primary focii appear early in the utterance and the more complex qualifications and expansions occur after it. However this question could be rephrased by moving the phrase "run over the road" to the end of the question. The question would then become "Did you see the dog, with a bone in his mouth, looking everywhere for a place to bury it, run over the road?" The rearranged question is a left branching construction because the complexities precede the verb, rather than follow it. This would be even more so if the interrogative marker "did you see" were also placed at the end.

Left branching sentences pose a greater strain on the listener than do right branching sentences. This was shown by Charrow and Charrow in 1979 when they investigated the comprehensibility of oral instructions given to jurors in court. The results of their research have been reported by both Danet and O'Barr who summarised Charrow & Charrow's findings: "Most English sentences tend to be right branching (i.e. the verb comes early in the sentence and the complex constructions follow it). An examination of uniform jury instructions as used in many jurisdictions reveals a high frequency of left branching sentences (i.e. ones in which complex constructions precede the verb). Such sentences are more difficult for English speakers to process" (O'Barr, 1982). "Embeddings were inversely related to comprehension; modifying instructions to reduce embeddings sharply increased comprehension in sentences containing three or more embedded clauses" (Danet 1980).

Embeddings themselves increase the stress on the respondent in court. If the child witness is confronted with questions containing a number of embedded pieces of information it is likely that comprehension will decrease and deteriorate as the number of embeddings increase. If the technique for embedding is also unlike that which the child is used to, and does not conform to the normal speech and conversation patterns of English, the comprehensibility of the question will be even lower. The fact that adult jurors had difficulty understanding speech which was characterised by left branching embeddings must confirm the idea that children, as less experienced language users, will find the task of comprehension even more daunting.

The following examples of left branching embeddings have been selected from the transcripts of children under cross examination.

Q. "Taking you back to the time when you were living in Sydney, when you first met Fred, at that time and throughout the period that Fred was living with your family, he used to work as a baker, didn't he?"
(Transcript 9 years)

Q. "At or after you finished seeing Mum at the hospital, were you walking home?'
(Transcript 9 years)

Q. "You had not seen him at all. Now it would be incorrect to suggest that whilst you were up between the buildings and this was occurring that the only noises coming from you were moans of pain?"
(Transcript 15 years)

Q. "Would it be incorrect to suggest that it was not so much a tripping but because of the state of inebriation of yourself, that you fell over?"
(Transcript 15 years)

Q. "How far away from your front door were you or from the front gate of your house when you got into the car? Two or three houses away or six houses or whereabouts was it?"
(Transcript 11 years)

Q. "All right, so between his patting you and his attempt or his trying to put his penis in your vagina, there was nothing else, is that right?'
(Transcript 11 years)

Q. "See we went through the sequence of what happened and how you stayed in bed and your father went out, he went downstairs, do you remember all those questions?"
(Transcript 11 years)

Q. "This terrible thing happening to you, if there was someone else there you'd remember it wouldn't you?"
(Transcript 11 years)

Q. "And whilst she was pushing you around what was your friend doing?"
(Transcript 7 years)

Q. "How far was the trampoline from you when you were first helped on the bike by Mr. Brown?"
(Transcript 7 years)

Q. "If I asked you to promise me to tell the truth, will you tell the truth"
(Transcript 6 years)

Q. "When you started playing with it, was it wet or dry?'

(Transcript 6 years)

The twelve examples given above cover an age range between six and fifteen years and illustrate different methods of incorporating left branching embeddings in questions directed to child witnesses. In each of the examples given above it is possible to see how these questions could be rephrased to more closely parallel normal English speech patterns. The rephrasings are an issue of style and would not prejudice the content of the questions. The questions would simply become more comprehensible. For instance looking at the fifth example above the more trying left branching embeddings could be changed to right branching embeddings easily. The question would then be asked as. "When you got into the car how far were you from the front door or the front gate of your house? Was it two or three houses away or six houses or whereabouts?" The content of the question has remained the same, the detail has not been interferred with in any way and the child has an increased chance of understanding the question because the main thrust of the question has been given first rather than last. The context for the question has been given primacy by establishing it first, and following it with expanded details. The child immediately knows that the question is about her possibly getting into the car. The details of the distance between the car and her house can be assimilated into this context. In its original form this question demands that the child must mentally store the details before the context for these details has been given. It is an unreasonable and unnecessary task.

Questions asked of child witnesses which incorporate a number of left branching embeddings are a feature of lawyer language. They appear constantly in all the transcripts studied. They contribute to the confusion which is often described by child witnesses in cases of sexual assault. This confusion may be created inadvertantly by cross examiners adhering to a model of question asking which is more akin to Latin prose than conversational English speech. Whatever the linguistic or social heritage of these questions it is clear that they interfere with the child's search for meaning and sense in court. The simplicity with which this problem of comprehensibility can be solved makes the concept of embedding a crucial consideration for all those interested in matching the language demands of the courtroom more closely with the language capacities of the child.

The list of thirteen features identified above is not complete. It doesn't include the obvious and prevalent use of the passive voice which can be used to distance one party or another from an action. It doesn't include the deletion of question markers from the beginnings of questions so that predictability for the hearer is reduced. It doesn't include the fact that a high proportion of questions are expressed as statements and require outright denial by the responder if any but the obvious reply is to be given.

There are a number of clearly identifiable features of this language which sounds so strange and as members of the language community we are all entitled to criticise and resist our exclusion.

Deployed singularly each of the features becomes a useful tactic. When each of the tactics is combined with another the result is a strategy which creates confusion and wrests credibility from the child victim witness.

"The States Parties to the present Convention shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child".

(Article 8, United Nations Rights of the Child, 1987)

10 CHILDREN MAKE SENSE

The results of the testing programme as described in Chapter Six indicate clearly that certain types of questions posed problems for the child trying to hear language. The ways in which children handled the task of repeating questions indicated the extent of the mismatch between the language of the question and their own particular language repertoires. The most difficult to hear were the "Selective Lawyer" variety of questions which resulted in the greatest loss of sense. These were followed by "Random Lawyer" questions. "Teacher" questions were easier for the children to hear and repeat, and finally the "Counsellor" questions were the most easily heard category of questions offered for repetition.

When the children in the testing programme were faced with questions expressed in language outside their repertoire they used a number of techniques to deal with the task of making sense. The extent of the mismatch between their language and the language they were asked to listen to and repeat determined how successful their attempts would be. The quality of the attempts themselves, however, provide us with clues as to how children go about making sense, just as measuring heart rates after a mild exercise tells us more about the workings of the heart than a single reading taken at a standstill. In some cases the children made no attempt at repetition at all, which implied that the language of the question was so far outside their normal repertoire that they could not begin to hear the question. This distance between the language style of the child and the language style of the question is attributable to the length of these particular questions and the language features displayed by them. The resulting nonrepetition was taken as a loss of both "THE SENSE" and "A SENSE" of the question. Thus a "NO SENSE" reading was recorded.

When the children tried to repeat questions, rather than offering no response at all, a total language mismatch was also indicated by their inability to produce pieces of language which had any meaning or form. The responses had no integrity and were not acceptable as independent pieces of language. Both their structure and their content were nonsense and for this reason they were also included in the "NO SENSE" category.

Where the distance between speaker and hearer was not so great, children altered the content and structure of questions to create pieces of language which had "A SENSE" independent of the original question. These changes could be either single element or multiple element changes. What they said made sense, but not the sense of the question to be repeated. The mismatch between the language of the question and the ability of the listener was lessened when children changed single elements within questions and generated language which preserved "THE SENSE" of the original question offered for repetition. Obviously totally accurate reproductions of the original question also maintained "THE SENSE".

The search for sense is a strong force in all language users and this is clearly reflected in the results of the testing programme outlined in the previous chapter.

Up to a certain level of complexity and difficulty the children perservered with the task of imposing sense on what they had heard. This is reflected in the "A SENSE" and the "THE SENSE" scores. The strange language which they confronted was changed, modified and brought into line with their experiences of the world of language. They substituted, omitted, reconstructed, added and transposed components of the original language of the questions in an effort to access the meaning of what they had heard. They persisted with these attempts up to the critical point at which the discrepancy between the child's language repertoire and the language style of the question became so great that the child either gave up completely and made no attempt at repetition, or they reproduced a question, the language of which was so syntactically and semanctically dislocated, that it retained none of the sense of language.

Between the two extremes of the total abandonment of sense and the completely accurate reproduction of the question given for repetition there is a great deal to be learnt about how children deal with strange language. If we focus our attention on those repetition errors which maintained either "A SENSE" or "THE SENSE" of the original question we observe children striving for meaning. The techniques and strategies which children used in this study to impose meaning on what they had heard show children at their linguistically tenacious best. In those cases where children continued their search for sense, and where they did manage to produce syntactically and semantically consistent pieces of language a number of clearly demonstrable language tactics were used. They reflect the language acuity of children and their passionate and hardworking inclination to make sense out of difficult pieces of adult speech.

Matthew who is 7 years old has been chosen to represent the 30 children who participated in this testing programme. While he does not have the obvious language sophistication of the older children involved in this project, he does demonstrate language skills and ways of handling strange language which are reflective of all children across all age levels. He is also young enough to be regarded by the court as a witness of dubious credibility. The following description of how Matthew dealt with language, some of which was outside his normal repertoire, reveals a persistent and extremely sophisticated effort to make sense of the world and its language conventions. His record appears in the later part of this chapter.

MATTHEW, AGE SEVEN YEARS

If we look first at the "Selective Lawyer" class of questions, Matthew accurately repeated two out of the twenty questions. Both these questions were short, but this does not appear to be the critical factor in repetition accuracy, as other questions in this class contained a similar number of words but produced inaccurate responses. Matthew reproduced two questions which contained only single element changes. These were questions four and twelve which read: "Had you been going to pre school for some years before?" and "And you make up stories about what other people have done with you, is that right?" The two single element changes consisted of one substitution and one omission. Both of these changes preserved the syntax and the semantics of the language. One maintained "THE SENSE" of the original question and one had "A SENSE" of language independent of the original question.

Matthew made multiple element changes to twelve out of the twenty questions in the "Selective Lawyer" class. In rank order these changes fell into the following categories.

a. omissions — 25
b. substitutions — 19
c. additions — 4
d. reconstructions — 3
e. transpositions — 1

Ten out of the twelve questions which Matthew reconstructed through multiple element changes maintained the syntax of real language, and the same number preserved the semantics of real language but they were not the same ten questions. However, from the pool of twelve questions which were subjected to multiple element changes only one maintained "THE SENSE" of the original question. Seven preserved "A SENSE" and four questions contained "NO SENSE" at all. There were four Nil Reproductions within this class of questions.

When Matthew's responses are placed on a continuum extending from total sense to no sense, 40% of the "Selective Lawyer" questions made no sense for him at all. If the instances when Matthew did not attempt any repetition are excluded, semantic and syntactic dislocations of the original question which resulted in nonsensical pieces of language are attributable to multiple element changes. The predominant forms of change which Matthew made were omissions and substitutions. 40% of Matthew's repetitions contained "A SENSE" of language but one which was independent of the content and language style of the actual questions, and 20% preserved "THE

SENSE" of the original questions through totally accurate reproduction.

Within the "Random Lawyer" category of questions offered for repetition a different pattern appears. Matthew accurately repeated thirteen out of the twenty questions. Only one question contained a single element change when Matthew repeated it, and question six in this section contained the only multiple element change. The changes consisted of two substitutions which preserved the syntax and semantics of language and which produced a piece of language which has "A SENSE". Matthew did not attempt to repeat five questions.

Within the "Teacher" and "Counsellor" categories of questions, Matthew scored 100% accuracy on all repetitions.

Matthew's Nil Reproductions and "NO SENSE" scores point clearly towards pieces of language which are completely outside his normal language repertoire. The distance between the language used and his language abilities cannot be bridged. However, if the "A SENSE" and the "THE SENSE" groupings are combined we can see that Matthew worked hard to grasp meaning even when parts of the language were outside the domain of his normal competence. The types of repetition errors which Matthew made and which resulted in responses containing language sense provide insights into his language processing abilities and skills. His mistakes identify some of the inappropriate features of lawyer language and reflect his desire to make sense out of this strange language.

In his search for sense he used certain observable tactics and by doing so he identified certain areas of mismatch between lawyer language and child language.

Firstly, he replaced some outdated forms of language used by lawyers with more appropriate terms.

Question: "And how long did you stay on the bike for whilst he was helping you ride it?"

Matthew's repetition: "And how long did you stay on the bike when he was helping you ride it?"

Similarly the inclusion of the term "in respect to" in the original question created problems for Matthew. The question was: "And where is the trampoline in respect to where you first met Mrs Brown here, do you understand what I am saying?" Matthew's repetition was "And where is the trampoline in the respect to where you first met Mrs Brown, do you under....." Clearly the phrase "in respect to" is not part of Matthew's repertoire, but rather than abandoning the search for sense he inserted "the" in front of "respect" to make an acceptable piece of language. He used his language skills and knowledge in an effort to find a path of sense amongst the strange language.

Another tactic for creating sense was the addition of clarifying anaphora which had been left out of the original question by the lawyer.

Question: "But you told the Principal earlier before lunch that your cat was pulled back off the lounge, do you remember, pulled back from the lounge?"

Matthew's repetition: "But when you told the Principal that your cat was pulled off the lounge, do you remember that your cat was pulled back off the lounge?"

A number of Matthew's omissions reflected an economy of language usage. Some of the convolutions of the language of cross examination were not part of his repertoire and for this reason they did not appear in his repetitions. For instance the question g ven for repetition was "Did you have a look to see whether there was any problem or damage or injury to it?" Matthew's response was "Did you see that there was any problem or injury or damage to it?" Similarly the following example demonstrated Matthew's search for sense amongst frequently repeated and confusing structures of language.

Question: "Well the first time that your sister pulled your hair is the same time that your sister punched against you, against you, is that right?"

Matthew's Repetition: "The same time that your sister pulled your hair did she punch you, punch you, is that right?"

The two examples illustrate the processes by which Matthew tried to impose sense on language which he was having difficulty hearing. He re-organised the questions to bring their language more into line with his own. The use of the word "against" in the last example is unusual. It is included unneccessarily and adds very little to either the precision or the clarity of the question. Matthew reshuffled the content of the question so that the language of the question became more comprehensible and reflected more accurately his own mastery of language.

Matthew also re-organised the content of the questions by rephrasing and relocating difficult chunks of the language as the following example demonstrates.

Question: "Alright well when you stopped riding the bike, what did you do then, when you stopped riding, what was the next thing that happened?"

Matthew's Repetition: "Alright when you stopped riding your bike what was the next thing you did

then?" Matthew eliminated the unnecessary repetitions in the question, and reshuffled the content to produce a question without passive constructions. The result maintained "A SENSE" of language, which more closely paralleled his language abilities and his expectations of sensible language.

It is significant to identify the full questions and parts of questions which Matthew did not attempt to repeat, since the language features of these questions are those which have no language sense for him. Firstly, the longer questions often posed a problem for Matthew although length alone was not a sufficient reason for nonrepetition. The fragmentation of the longer questions by the insertion of rhetorical devices, the peculiar structure of these questions and the number of embedded pieces of information which they contained all affected his ability to reproduce these pieces of language. The following example is representative of these longer and more complicated questions.

Question: "Now, do you remember giving some evidence about after you had gone and seen Jenny, I think it was, and told her, you then went back to the park and you saw Mrs Brown near a tree?"

Matthew omitted chunks of language phrased in the passive voice.

Question: "Right, and when Mrs Brown approached you, do you remember what was said between herself and you?"

Matthew's Repetition: "Right, when Mrs Brown approached you, did you know that she was....."

Similarly Matthew could not repeat whole questions phrased in the passive voice. Use of the passive voice objectifies actions and makes the relationship between the doer and the recipient of any particular action more difficult to apprehend. It is clearly, in Matthew's case, a language convention that he is neither comfortable with, nor used to.

Questions which contained a number of time options also posed repetition problems for Matthew as did the use of the legal terminology "I'll withdraw that" when it appeared in the middle of a question.

The profile of language skills which the study of Matthew reflects is indicative of the strength which he brings to the task of untangling strange language. In every case the children in this study made concerted efforts to cope with the task of repeating questions up to that point where the language style outstripped their capacities.

Matthew, as a representative of the thirty children who participated in this testing programme, reflected the trends which have been outlined in the chapters dealing with the programme and its results. His omission of certain questions showed that the language of these questions was so far away from his own experiences of language that he could not begin to sort the sense from the nonsense that he was listening to. Responses which resulted in syntactically and semantically dislocated pieces of language were unsuccessful attempts to align his own language competencies with the language demands of the courtroom. These questions provided the most blatant examples of the mismatch between children's language abilities and the demands placed on those capacities during cross examination.

On the other side of the sense equation, those repetition errors which preserved either "THE SENSE" or "A SENSE" of language exposed Matthew's language capabilities under conditions of language duress. Matthew emerged from this close scrutiny as a sophisticated and persistent manipulator of language.

His skills indicated that although the language was strange he nevertheless applied himself to the task of imposing some meaning on what he had heard. Matthew's attempts at repetition are in some way reflective of the efforts of all children. They want to make sense of what they hear and they will try to do this by using all the linguistic equipment at their disposal. There is no case to be made for either children as frail users of language or as linguistic amateurs. They do not easily give up the search for sense.

However, under extreme conditions, children do abandon the challenge, as Matthew did and we can hypothesize about the effects of this mismatch on children under cross examination. If children cannot make sense of what they hear there is nothing to be gained for either partner in the courtroom conversation, apart from the systematic destruction of the child's credibility as a language user and a witness. The truth under such conditions of stress and trauma is likely to be a confused and elusive quality. Since the responsibility for the language used and the consequent mismatch created is vested most obviously with the law, it is similarly the law's responsibility to ensure that the language rights and abilities of the child witness are considered, respected, and given the credit to which they are due.

The following questions are those relevant to 7 year old children and the markings a record of Matthew's efforts at repetition.

SELECTIVE LAWYER QUESTIONS

1. At the time ~~that~~ this occurred you ~~were~~ are seven years old, is that right?

2. And the park that you ~~were~~ are playing in, is ~~that~~ the next door to the pre-school that you went to?

3. And where is the trampoline in respect to where you first met Mrs Brown here, do you ~~understand what I am saying~~ under?

4. ~~Had~~ Have you been going to the pre-school for some years before?

5. Right ~~and~~ when Mrs Brown approached you, ~~do~~ did you ~~remember~~ know what was said between herself and you.

6. And how long did you stay on the bike ~~for whilst~~ when he was helping you ride it?

7. Alright, ~~well~~ when you stopped riding ~~the~~ your bike, ~~what did you do then, when you stopped riding~~, what was the next thing ~~that happened~~ you did then?

8. ~~Now do you remember giving some evidence about after you had gone and seen Jenny, I think it was, and told her you then went back to the park and you saw Mrs Brown near a tree?~~

9. Right ~~now~~ ~~after~~ when you had ~~first gone~~ went to the Principal's office ~~you remember whether~~ did you thinks it was ~~on~~ the day that ~~you made the~~ statement, ~~or the next day?~~

10. ~~Well, do you know that you're going to tell me something that's happened, that's why you've been asked to come here, do you know that?~~

11. Those stories are what you think about in your head?

12. And you make up stories about what ~~other~~ people have done with you, is that right?

13. When you ~~say~~ said you got into trouble ~~for~~ from telling stories what ~~sort of~~ trouble did you get?

14. ~~And then another time later after you've had the smacks, maybe weeks, maybe months, maybe years later, you've told other stories that are untrue and you've got more smacks from Mummy and Daddy?~~

15. ~~I understand that but the second time you got the smacks for telling lies the second time, it didn't stop you telling lies did it?~~

16. But you told the Principal ~~earlier before lunch~~ when that your cat was pulled ~~back~~ off the lounge do you remember, pulled back ~~from~~ off the lounge?

17. ~~Well~~ And the ~~first~~ same time that your sister pulled your hair ~~is the same time that your sister~~ did she ~~punched~~ punch ~~against~~ you, ~~against~~ punch you is that right?

18. Did you ~~have a look to~~ see ~~whether~~ that there was any problem or ~~damage~~ or injury damage to it?

19. Did you see her do anything else, did she do anything else?

20. I'm sorry, ~~you might not understand me~~ but I told you, the first ~~time and then it's finished, how long until the next time that your sister pulled your hair?~~

RANDOM LAWYER QUESTIONS

1. That is stories that are untrue?

2. ~~So the first time you got smacked for telling stories you still told stories and got smacked again. Is that right? So it didn't make any difference to whether or not you told any stories did it?~~

3. The third time it was dark, was it?

4. And you've been for telling lies in Loughnan Street?

5. Again?

6. Let me see if ~~I've~~ you've got it right? You've told stories ~~which~~ that are untrue?

7. He has got into trouble for telling lies at Loughnan Street?

8. ~~Has there been sometimes when Mummy and Daddy have got the three of you together and told you that you are not allowed to tell lies? Has that ever happened?~~

9. ~~Not only have you been told that it is bad but when you have told lies you've been smacked?~~

10. When was that?

11. And ~~whilst she~~ while was pushing you around what was your friend doing?

12. ~~Now the envelope, I'll withdraw that, the park that you were in, has it got a fence around it?~~

13. Any climbing equipment?

14. Right now you say that you had your costume that day, is that right?

15. And what sort of costume was it?

16. When did you first see the envelope?

17. Right and you spoke to Mrs Brown there, is that right?

18. Yes?

19. And has the park got a path through it?

20. ~~Now how far was the trampoline from you when you were first helped on the bike by Mrs Brown?~~

COUNSELLOR QUESTIONS

1. Did it only happen once (one time)?

2. Who did it?

3. Was anyone else there?

4. Were you scared?

5. Did you tell your Mum?

TEACHER QUESTIONS

1. What did you do over the weekend, Jodie? (N.B. insert name)

2. Which subject do you like best at school?

3. Who is your favourite teacher?

4. When did you start feeling ill, before breakfast or afterwards?

5. How do you make the dog sit up and beg?

"Without awareness of the child's reality the professional will tend to reflect traditional mythology and to give the stamp of authority to continuing stigmatization of the child"
(Summit, 1983)

11 A QUESTION OF CREDIBILITY

A preceeding chapter has dealt with features of lawyer language which contribute to the obvious mismatch between children's language abilities and the language demands of the courtroom during the cross examination of child witnesses in cases of sexual assualt. The inability of children to hear certain types of questions, and the consequent confusion which is reflected in their responses, has been established.

To appreciate the implications of mismatched language styles, it is necessary to place lawyer language within the broader context of the total court proceedings, and examine the impact that language mismatch has on the protagonists within the court. The magistrate at the committal stage, and the judge and jury at higher court hearings have to make decisions based on the information displayed to them by the Prosecution and the Defence in unison with the witnesses in the case. If the alleged victim is one of these witnesses and also a child, whose language abilities are outstripped by the language repertoires of the interrogators, the status of the child and her evidence is inevitably reduced.

In a combative arena where the format for questions is determined solely by the questioner who is also the more sophisticated and skilled language user, inequalities in language usage and expertise must confer lower status on the respondent. Any confused responses given by the child, the inevitable tearful and emotional breakdowns, and any examples of conflicting information offered, all confirm the child's lack of credibility within the corporate mind of the court. The fact that this credibility gap has been partially created by a language mismatch between the lawyer and the child witness is either tacitly acknowledged as acceptable practice, since it is permitted to perpetuate itself, or it is an issue which has fallen outside the province of those concerned with the administration of justice. Whatever the reason, the fact remains that the credibility of the child witness is systematically destroyed by a combination of language devices and questioning styles.

The tendency to doubt the credibility of children falls conveniently into slots already present in the community's ethos. Children are thought of as being prone to fantasy; their ability to differentiate between reality and imagination is considered to be poorly developed; their memory for detail is regarded as being far below that demonstrated by adults; and generally their evidence is to be treated with scepticism unless their outstanding performance in court dispels this predisposition. The questioning style and the language devices employed during cross examination exploit these attitudes and aggravate the already perplexing question of child credibility.

Another dimension to the issue of credibility is seen very clearly when the validity and reliability of the child's evidence is called directly into question by the cross examiner. This is achieved in a number of different ways and on a number of different levels. The features of lawyer language described previously which contribute to the mismatch between children's language abilities and the language demands of the courtroom all reduce the credibility of the child by default. If a child cannot hear language then the quality of the response given cannot be expected to adequately reflect the child's knowledge and experience surrounding the incident of alleged assault. Given this atmosphere of language mismatch, certain types of questions are more likely to contribute directly to the loss of credibility than others. The extensive use of Police Statements for verification by the child perhaps two years after the initial disclosure, the quotation of the child's words given at another stage of the court proceedings and wrapped up in a new format, the quotation of other people's words for substantiation

or refutation, and unclear context establishment in cases of multiple assault, are clear examples of some of the techniques used to directly call the credibility of the child into question.

TELLING LIES

The most stark example of questions which reduce the credibility of the child occur when the cross examiner asserts that the child's responses are untrue. These assertions either appear as single dramatic interpolations or as the result of a subtle line of questioning. These questions are intended to call the capacities and truthfulness of the child witness into disrepute, and although the legal technology for achieving this end varies the effect of the campaign against child credibility is the same.

The following examples taken from the transcripts display the language levers which are used to directly impeach the evidence given by the child victim witness.

In this first example the preceeding four questions had dealt with living arrangements and then the tenor of the questioning altered in the following way:

A)

Q "And you are telling the truth up there, are you, on the witness stand?"
A "Yes"
Q "It is not all a pack of lies?"
A "No"
Q "You are not fabricating this evidence just to support your mother, or have a go at your father in some way?"
A "No, I am telling the truth" (Child 12 years)

B)

Q "Now you said you used the term 'bull artist'?"
A "Yes"
Q "Are you absolutely certain that that was the term that you used?"
A "Yes"
Q "You have no doubt about that?"
A "No"
Q "Could you have said the words 'You're a big fat liar?"
A "Yes"
Q "And not the term 'bull artist'?
A "Yes, I could have"
Q "See you could be mistaken about a lot of the evidence you are giving could you not?"
A "Yes" (Child 10 years)

C)

"You're getting a bit mixed up because it wasn't the truth?" (Child 11 years)

D)

I put it to you, you have made up this story".
A "Beg your pardon?"
Q "About what the, you say the Defendant did to you and made you do to him, you made it up, have you not?"
A "No"
Q "You have made it up because you have been upset and angry with the defendant from time to time, have you not?"
A "No"
Q "It is a.....of lies. I am sorry I withdraw that, he will not, it is all lies, is it not?"
A "No" (Child 13 years)

E)

Q "You are not making this up are you Crystal?"
A "No" (Child 15 years)

F)

Q "And I suggest to you that all your evidence about what happened on this day is not only a mistake, but it is untrue?"
A "That's not untrue" (Child 13 years)

The suggestibility of the child witness is explored during cross examination by a line of questioning which is meant to imply that either the child's counsellor or the police have coached the child to give acceptable answers. The fact that the child witness has been permitted to read her police statement is assumed to be prejudicial to the case. Adults have access to their statements but children are expected to recall events that happened perhaps two or more years ago with no reference to the words they used or the facts which they cited. Preparation for court seems to be an implied luxury reserved only for adults. This line of questioning appears in the majority of transcripts studied and it is firmly based on the theory that children are more suggestible than adults.

Q "And I take it that you spent a lot of time with each of those police officers before coming to court today, have you not?"
A "Yes"
Q "And have they gone through the evidence that you would give this morning with you?"
A "Yes"
Q "And have they told you what to say in relation to certain questions?"
A "No"
Q "Have they told you the sort of questions they were going to ask you?"
A "Yes"
Q "And how many times did they ask you, tell you what questions they were going to be putting to you?"
A "Only once" (Child aged 10 years)

FANTASY AND REALITY

One of the disclaiming explanations for the low credibility of the child witness is the often cited tendency of children to revert to fantasy, and their inability to make clear distinctions beween what is real and what is part of their make believe world. This theory leads neatly into a widespread belief that children fabricate claims of sexual assault. Roland C. Summit (1983) investigated the validity of this preconception by examining "....thousands of reports or complaints of adult victimisation of young children." The results of his analysis showed that "Of the children who were found to have misrepresented their complaints, most had sought to understate the frequency or duration of sexual experiences, even when reports were made in anger and in apparent retaliation against violence or humiliation. Very few children, no more than two or three per thousand, have been found to exaggerate or invent claims of sexual molestation." (Summit 1983) In 1981 Conte and Berliner maintained that "The general veracity of children's reports is supported by the relatively high rates of admission by offenders". It is also claimed by Berliner and Barbieri in 1984 that "Not a single study has ever found false accusations of sexual assault a plausible interpretation of a substantial portion of cases".

No one disputes the fact that children do have a fantasy world, just as adults do; only adults don't talk about it very much. However, children's fantasies are generally within the realms of their literate, emotional and social lives. It is unusual for a child to fabricate sexual encounters because these are beyond their expected levels of maturity and experience. Nevertheless the ethic of the lying and manipulative child who creates fantasy incidents of sexual abuse to punish an innocent and unsuspecting adult remains a prevalent attitude. The examples which follow show how this idea is woven into the fabric of cross examination.

In one case the cross examiner asked the child witness aged seven years, one hundred and twenty one questions about her propensity to make up stories, and the kind of punishment she and her brother received when her father, the alleged offender, suspected such stories.

A)

Q "Do you sometimes make up stories Susan?"
A "At school"
Q "Anytime?"
A "Yes"
Q "Those stories are what you think about in your head?"
A "Yes"
Q "Do you make up stories that are sometimes not true?"
A "Yes"
Q "Do you make up stories from what is inside your head.
A "Yes"
Q "You think about things and you tell them to others and they are not true. Is that right?"
A "I write it down on paper"
Q "You write it down on paper. O.K. You make up stories on paper?"
A "Yes"
Q "Do you get good marks for making stories on paper?"
A "Yes"
Q "Do you sometimes make up stories when you tell other people?"
A "Sometimes but most of the time I tell the truth"
Q "But you don't always tell the truth?"
A "Only when I am making up stories". (Child 7 years)

and so it continued for another one hundred and eleven questions.

A similar line of questioning was pursued at the outset of the cross examination of an eleven year old boy.

B)

Q "You write essays at school Donald?"
A "Beg you pardon?"
Q "Do you write essays at school?"
A "Um, no"
Q "Do you know what an essay is?"
A "Yes, a long story"
Q "You don't write stories at all at school in English or anything like that?"
A "In English, we just write stories but not really long ones".
Q "And are you pretty good at making up stories?"
A "Oh, with my imagination just little stories, yeah"
Q "So you've got a fairly good imagination?"
A "Yeah"
Q "And see I suggest to you Donald that all this is in your imagination"
A "No. No it isn't "(Child 11 years)

C)

Q "Is there any chance do you think at all that you might be wrong about some of these things?"
A "Pardon?"
Q "Is there any chance at all do you think, that you might be wrong about some of these things?"
A "No"
Q "I see. No chance of a mistake?"
A "No"
Q "No chance of having imagined some of this?"
A "Pardon"
Q "No chance of having imagined some of this?"

A "I can't hear you?"
Q "There is no chance that you might have imagined some of this?"
A "Oh"
Q "There is no chance that you might have imagined some of this?"
A "No". (Child 10 years)

The following string of questions appeared last in the cross examination of this child.

D)

Q "Now when you gave your evidence when you were answering questions from Gerald earlier, did you say that your uncle had kissed you and put his tongue into your mouth before or after he touched your vagina?"
A "Before"
Q "So the kissing was first?"
A "Yes"
Q "Now Erica have you ever had dreams before?"
A "No"
Q "Never had dreams before?"
A "Oh, yes"
Q "And have you dreamt about different things?"
A "Yes"
Q "And did any of those dreams involve people that you know?"
A "No"
Q "Always people you did not know?"
A "Mmm"
Q "Is that right?"
A "Yes"
Q "So you have never had a dream about anyone that you actually knew?"
A "No"
Q "Or do you not remember all that well?"
A "I don't remember very well" (Child 10 years)

E)

Q "Erica you have said that you have had dreams from time to time?"
A "Yes"
Q "Have some of them been pleasant dreams?"
A "Only a few that I've, I remember?"
Q "Where nice things happen?"
A "Yes"
Q "And have some of them been unpleasant dreams?"
A "Yes"
Q "But have you sometimes woken up in the middle of the night thinking that something terrible was happening only to find out it was just a dream?"
A "Yes"
Q "And those dreams can be very real, can they not?"
A "Yes" (Child 10 years)

MEMORY

"Children show many of the same confusions that adults show when recalling repeated events" (Goodman, G.S. et al in Ceci et al 1987). It is not surprising that in cases of multiple assault, the memory for detail which is demanded by the cross examiner is often unclear. This problem is not just an affliction of childhood but a patterning within memory which is a human characteristic. The inability to accurately recall the minute details of repeated instances of sexual assualt is not an adequate criterion for downgrading the credibility of the child witness. Chapter Eight illustrates this well.

The cumulative effect of such an assault on the credibility of the child witness frequently forces the child to break down or become distraught. The consistency and unrelenting questioning format which is followed by the cross examiner is illustrated by the following example which involves a child of eleven years of age. The child by this stage of the proceedings has already answered two hundred and forty questions directed to him by the prosecutor and two hundred and ninety questions posed by the cross examiner. Up to this point the child has dealt with five hundred and thirty questions in one day.

Q "Would you read paragraph 9 to yourself, did you read it?"
A "Yes"
Q "Do you agree that what I read to you appears in that document signed by you?"
A "Yes, but when I was reading the statement and I can't remember that Dad tried to enter me at Churchill Street."
Q "But you see when you read your statement the other day, you didn't see anything wrong with your statement did you?"
A "No"
Q "And you signed that document is that right?"
A "Hmm"
Q "And when you went home you had a look at it and you didn't see any mistakes?"
A "No"
Q "And when you had a look at it the other day you didn't see any mistakes?"
A "No"
Q "And you can read, you're a fairly intelligent lad aren't you, you've got to answer yes or no, you're not allowed to say hmmm"
A "Yes"
Q "So that would be something that you would pick up isn't it, an intelligent lad like you, wouldn't it?"
A "Yes"
Q "But you didn't pick it up because what you're telling His Worship today isn't the truth?"
A "Yes it is"

Q "Well why did you make the mistake?"
A "I'm not sure, I just can't remember reading it in the statement"
Q "Well did that happen in that way?"
A "Not that I can remember"
Q "Well that could be something you'd remember wouldn't it, you see the position Donald I suggest to you, you're not telling the truth?"
A "I am"
Q "Well do you know why you made that mistake?"
A "No I just can't remember any of the statement"

Prosecutor: Would Your Worship take a short adjournment, the boy's obviously distraught.

MOTIVES

In a number of the transcripts studied it became clear that the cross examiner tried to ascribe other motives to the child for disclosing alleged incidents of sexual assault. The implication of such a line of questioning is that the child has fabricated a story to punish a parent or relation who has not indulged the child's whims and fancies or who has been in conflict with another parent or sibling. The following examples show how this line of questioning develops:

A)

Q "And this is the, this October, 1984, that's the only time that your father has done anything like that to you, isn't it?"
A "Yes"
Q "And your mother has been deceased since 1978?"
A "Yes"
Q "And your father brought you up?"
A "Yes"
Q "And you were in relation to being grounded, you didn't like not being able to go with girl friends to the movies in town?"
A "mm"
Q "That's right isn't it?"
A "Yes"
Q "And your father didn't like you going down to Coolamon on your own and roaming the streets on your own, did he?"
A "No"
Q "And you were unhappy and angry about that, weren't you?"
A "Yeah"
Q "So apart from the reason of the allegations that you have made here, you had reason to be unhappy and angry with the way your father was looking after you, didn't you?"
A "mmm" (no verbal reply)
Q "Because he wouldn't let you do what you wanted to do?"
A "Yeah"
Q "And you didn't like it?"
A "No"
Q "And that's the reason you didn't want to go home?"
A "No" (Child 13 years)

B)

Q "And you found yourself in this position because you were trying to get away from home and your complaints didn't work and then you made up this story and you have had to stick to it. What do you say to that?"
A "No. If I made up the story why would I....."
Q "Just answer the questions please Jessica." (Child 13 years)

In these examples, as in many similar examples, the right of the cross examiner to suggest various alternatives to the evidence given by the witness is considered acceptable legal practice. The extent to which the child witness appreciates this facet of the law is doubtful.

When the child is not aware of the motives behind such lines of questioning, the conclusions which they draw are hurtful. They have had their suitability as a witness scrutinised at the outset of the case. They are therefore presumably aware of the importance and significance of the court and its demands for absolute truth and accuracy. Yet they are still subject to suggestions which are quite outside the pamameters of any other evidence which they give. One magistrate tried to explain the legal assumptions upon which such impeachments are based when he said to a distraught 11 year old:

Bench: "Mr Brown is asking you, is when we say 'putting to you' he is suggesting that something happened, now if you say that it didn't happen, I think the easiest thing for you to say is 'no', but if you say that it did happen the easiest thing for you to say is 'yes' so perhaps if, I know that you have already said that the phone call didn't happen, is that right?"

A "Yes"

Bench: "Now he is suggesting some other things to you that might I suppose remind you that it might have happened, now I suppose it is hard to understand why he says these things to you when you say it didn't happen, that's hard to understand isn't it but he is allowed to do these things and if you say it didn't happen, all you have to say is 'no', okay, or if it did say 'yes', now do you follow that?"

A "Yes"

Lawyer language generally, and questions which confront the credibility of the child specifically, mitigate against a belief in the competence of the child victim witness in cases of sexual assault. The attitude of suspicion which surrounds children

appearing in court has a long and complicated history. In recent times the myth of the untruthful child can be traced to a cluster of French psychoanalysts who disputed Freud's original theory of child sexual assault being responsible for later life neuroses in females. Freud withdrew his theories under pressure from Charcot who described children with deplorable antecedents, as being prone to constructing fantastic stories about perfectly respectable human beings and upstanding members of the community. The idea has persisted and many adults still assume that children are more untruthful than truthful.

The perception of the child as an impure and lesser version of an adult was entrenched by Victorian ethics. The child was considered to be a miniature adult whose childish ways had to be modified to ensure that they would become civilised members of the society. As children their rights and abilities to tell the truth were questionable.

Today the community is generally still sceptical of the child's ability to tell the truth. This attitude is focussed clearly when the discussion concerns child sexual assault. Disclaimers of child credibility range from anecdotal instances of children exploiting adults, to questions about the child's ability to perceive accurately and report truthfully. Society still has a model for child performance which is a derivative of adult experience.

Children are expected to perform in an adult way yet at a much reduced level of competence and efficiency. The inherent apprecation of the differences between children and adults are considered by the community to be quantitative rather than qualitative. That is, as a child develops they get more of the same until they reach adulthood. This way of thinking about children is based on ideas of childhood deficit. Children are thought of as socially, emotionally and intellectually inferior to their adult models and their validity and reliability as individuals is reduced in direct proportion to their age. This way of thinking precludes any serious consideration being given to the issue of child credibility. As long as child development is seen as having little integrity, the inferior status of the child will remain entrenched.

To elevate child credibility it is necessary for the community as a whole to appreciate the many stages and faces of child development. In a courtroom few provisions have been made to accommodate the world of the child. The language used by the law is perhaps the most glaring example of the uncompromising imposition of adult models on individuals whose age and development put them outside the language. The existence of a mismatch between the language of the speaker and the language of the hearer is attributed to the general incompetence of the child witness whose credibility is reduced by implication.

Roland C. Summit in an article called "The Child Abuse Accommodation Syndrome" adds another perspective to the discussion about child credibility. He maintains that society's values are stacked in several ways heavily against the child victim witness. First, the child has a great deal of difficulty accepting the abuse of love and power by a trusted adult. Second, the translation of this abuse, during disclosure, is restricted by the likely absence of language and concepts to express the necessary details in a convincing and credible way. Third, the legal system bolstered by community attitudes "...allows the child one acceptable set of reactions to such an experience. Like the adult victim of rape, the child victim is expected to forcibly resist, to cry for help and attempt to escape the intrusion. By that standard almost every child fails. The normal reaction is to play possum, that is to feign sleep, to shift position and pull up the covers.... When there is no place to run they have no choice but to try and hide. It is sad to hear children attacked by attorneys and discredited by juries because they claimed to be molested yet admitted they made no protest or outcry...A victim will be judged as a willing accomplice unless compliance was achieved through overwhelming force or threat of violence. Adults must be reminded that the wordless action or gesture of a parent is an absolutely compelling force for a dependent child and the threat of loss of love, or loss of family security is more frightening to the child than any threat of violence." (Summit, 1983)

Two factors are primarily responsible for the ethic which underlies attitudes towards child credibility in the courtroom. These are concerned with the generally unreliable status of children's eye witness memory, and their seemingly high level of suggestability to outside influences, comments and coaching. These two propositions underscore much of the thinking which produces the consistent attack on the credibility of the child witness during cross examination. The extent to which these propositions have external validity, apart from the strength of those who espouse them, has stimulated a great deal of debate over the past ten years. This work has culminated in 1987 with the publication of a book entitled "Children's Eyewitness Memory" (Ceci, S.J.; Toglia, M.P. and Ross, D.F: Springer-Verlag New York, 1987) which the editors maintain "...grew out of a 1985 American Psychological Symposium that was devoted to the issue of children's eyewitness memory. The book comprises a collection of chapters that lie at the crossroads of psychology and criminal justice". The conclusions which are drawn at the end of each section support the ability

and integrity of the child witness to accurately answer questions in court.

A comprehensive review of the literature on this topic turns up a prodigious volume of material. The extensive research, the numerous experiments involving tests of memory under conditions of stress and non stress and the compilation and comparison of already extant data reflects the interest in this subject, particularly in the United States.

It is difficult to find a path amongst all this information, but there are certain arguments which reappear as themes in these studies. The theory that children are more susceptible to suggestion has been challenged by Loftus and Davies (1984). An analysis and description of some of the major research undertaken led them to conclude that "It is one thing to claim that children are suggestible, but quite a different matter to claim that they are more suggestible than adults." A description of the processes by which information is stored in memory and then retrieved (acquisition, retention, retrieval) is seen by the authors as explaining the reasons why children and adults may focus on remembering different details surrounding an incident. Some researchers have actually maintained that children's memory for detail may in fact be more accurate than adult's because their level of sophistication and cognitive development does not clutter their minds with the extensive inferences and value judgements which pervade the mature memory.

Research on the recognition memory abilities of children compared with the skills of adults has shown that there are typically no "...age differences in performance, with children as young as five years of age performing as well as adults." (Marin et al, 1979) The differences in memory abilities are clearer when the mode of recall is altered. When given free recall tasks "...young children may require external cues or prompts if they are to retrieve or recall past events" (Marin et al, 1978).
"As expected the number of items mentioned increased linearly with age." Some studies indicate that the patterning of memory is established as early as first grade. The paradigm by which information is allocated to memory seems to remain constant from this age onwards. "Although significant developmental differences exist in the amount of information recalled from simple stories, the pattern of recall for story grammar categories is highly consistent across age from first grade to adulthood." (Saywitz in Ceci et al, 1987).

The effects of stress on memory capacities has also been a subject of research, with children in an innoculation clinic participating in memory related tasks. "The innoculation study...demonstrates that children are not equally suggestible about all types of information. Their suggestibility is greater for characteristics of the room in which the event occured than for the actions which took place or the physical characteristics of the 'culprit'. Interestingly, across the studies, children never made up false stories of abuse even when asked questions that might foster such reports." (Goodman, et al in Ceci et al 1987). The pervasive attitude that children are more susceptible to suggestion than adults has been a subject of controversy for some time. Despite the fact that this issue has not been resolved, a number of critical themes have been identified. In a number of purely experimental contexts children and adults performed equally well on tasks, designed to rate their relative suggestabilities. Also, the workings of the human memory are now better understood, as are the factors which influence the strength of a memory or its susceptability to alteration. However, memory is likely to be as individual a characteristic as personality, with just as many internal and external factors controlling its development. Some of the factors which contribute to the relative strength or weakness of a memory have been identified as acquaintance with the predominant theme of the situation or event, the linguistic ability to translate experience into memory, the significance or focus of the experience, and the emotional intensity associated with the event.

Once a memory is in place it does not reside in the mind in splendid isolation. All images, experiences, ideas and emotions are integrated into an already existing mental pattern which may be changed or modified depending on the type of new information received. Memory is a constantly changing dimension of human intellectual activity, it almost goes on without our knowledge. Given this framework, no one is free from the slight of suggestibility nor would they want to be.

The consensus of research findings points towards the need to elevate the status of the child witness in court. If ineffective or inaccurate memory skills have been discriminatory factors operating against the credibility of the child in court, it is time for their removal from the armoury of credibility disclaimers.

These research findings have all helped to dispel the myths that children are inaccurate reporters of events and more liable to suggestibility than adults. The notion that the child witness is automatically less reliable and credible than her adult counterpart is a theory based on unacceptable assumptions. The processes required for tapping into a child's memory are different. This difference however, does not imply that the fabric or content of the child's memory is inferior to that of an adult, rather it needs to be approached and explored in qualitatively different ways. The counselling profession has long

recognised the value of prompts such as puppets and anatomically correct dolls to allow children to objectify and discuss the details of their abuse. The picture and history which results from a child centered approach to interviewing and questioning are no less valid because of the admission of outside cues.

Under conditions of cross examination the child is placed in an adversarial and stressful situation which tests the resilience of even the most confident of adults. The effects of such pressures have not been investigated for obvious reasons. No researcher would deliberately recreate for a child the hostile and alien environment of a courtroom, neither would they replicate the sequence of hundreds of questions phrased in strange language which children are asked in court. However, it is worthwhile to hypothesise that under these conditions, and given the predisposition of the community to disbelieve children it is a relatively easy task to create an atmosphere where the credibility of the child is jeopardised. The right of the lawyer to directly oppose the evidence given by the child witness, the implicit hostility which surrounds cross examination, alien language forms and the sheer volume of questions asked, all conspire to confuse the child. It is a quick and easy step to destroy the credibility of the child witness. The responsibility for this destruction does not lie with the child but with the judicial system. Children can be competent, credible and reliable witnesses if they are allowed to be.

"The normal reaction is to 'play possum', that is to feign sleep, to shift position and to pull up the covers."
(Summit, 1983)

12 MORE BEGINNINGS

It is clearly a trap for people concerned with the welfare of children to claim for them an extra status and thereby invalidate their own claims to justice. The material we have gathered and reviewed regarding the treatment of sexually abused children appearing as witnesses in New South Wales criminal courts suggests that these children are, just as surely as the defendants, on trial. In that light we do make some special claims.

By starting from a welfare concern we are not claiming for those children any supralegal status. Rather we are claiming that because of their less powerful position and because of the forceful effects of words upon them, child victim witnesses are being treated as sublegal entities.

Being powerless and being the subject of verbal batterings are by no means the sole province of children abused or otherwise but the issue is most discernable with this particular group of society's victims.

What is done to these children in court is done in the name of the welfare of defendants and, given the adversarial nature of criminal proceedings, it is hard to imagine it being otherwise.

This study creates some critical space for the further consideration of the welfare of the child in the context of court, and a reappraisal of that context.

The children who find themselves in court are neither accusers in the traditional adult sense, nor bystanders to the activities of others. They are young people who have asked for help and protection and in so doing bring down upon themselves all the force and scrutiny of combat.

In recent times and around the world there have been a number of measures discussed and tried out to accommodate a concern for the welfare of children in court whilst preserving the rights of defendants. They include the use of screens in court, replaying in court interviews held elsewhere and using closed circuit video devices. Whatever the efficacy or advisability of these measures the issue of strange language remains.

One measure that could be defended is that because the language of court is so strange to the children that the use of a translator is justified. No single response however will accommodate the concerns of this study. As the meanings and effects of language come from a number of sources any response to the problem should recognise this. Indeed a total change to the court environment could be advocated as well as a total language reform of court proceedings. How one uses language is after all within each person's grasp to regulate and change. The basic recommendation is not conceptually complex and it is that children and alleged victims should be allowed to tell their own stories in their own language supported by other methods of communicating sense and meaning. If the court cannot accept this adjustment then the child is entitled to a translator. If neither of these adjustments can be made then the evidence of this study suggests that the child will remain unheard. We have no doubt that, if only as a repository of evidence, children's knowledge remains virtually untapped and unexploited by the prosecution. Strange language is not a feature only of cross examination. Even sympathetic prosecutors fail to make the adjustments children require to enable them to respond sensibly to questions asked. Possibly the world of childhood and victimisation is strange to these very adults entrusted with the task of putting the child's case.

Strange language is a barrier which stands in the way of child victim witnesses saying what they might. An appreciation of the strangness and its effects should equip prosecutors to help their witnesses present themselves more fully, and magistrates and judges to hold in check the linguistic excesses of cross examiners.

Police are reluctant to prosecute on behalf of young children because of the treatment they get in court and magistrates refuse to set cases for trial because the primary witness in his estimation would not stand the rigours of that trial. Yet other ways of collecting evidence, asking questions, cross

referencing stories and ascertaining truth remain unexploited by the courts.

The young and the slow are increasingly vulnerable. These on the ground reports are reflected in overseas studies. "There are four main reasons why prosecution in these cases is difficult. First, adults are often sceptical when children report having been molested. Second, many lay and professional people believe that sexual abuse is caused by a mental disorder, and therefore that the mental health system, not the criminal justice system, is the proper forum for dealing with the matter. Third, many fear that children will be traumatised by taking part in such legal proceedings and hence be further victimised. Fourth, many prosecutors do not want to undertake cases that rest heavily on the testimony of child victims because they fear that the child will not be able to perform adequately as a witness". (Berliner & Barbieri, 1984). The more strange the examining environment, the more likely these fears will be realised.

When there is no evidence of physical injury and there is no other corroborating evidence the case comes down to an issue of child versus adult in a legal context which is more appropriate for the adult than the child. Currently available statistics indicate ".....there is no indication of physical injury to 171 (76.7%) of the 223 complainants" (Cashmore and Horsky, 1987). Given these figures it is necessary for the judicial system to create a new category of evidence which is admissable in court and which safeguards the interests of this large population of children who sustain no obvious physical signs of assault. There is a need for the admission of expert advice on the identification of other indicators of sexual assault other than the purely observable ones. The verbal assaults evident in many of the proceedings reviewed, and their continued endorsement, stand in the way of any progress in this direction.

The claim by a community health counsellor that ".... there is more in the system to stop kids talking than to keep them going." we find sustainable. The situation is even more critical for young and less verbal children who need, and can ably take advantage of, the opportunity to display what they know in a variety of ways. The use of anatomical dolls, drawing, interviews and assessments are all forms of creating messages to either supplement, support or refute verbal testimony. The courtroom does not generally allow for these non-verbal representations by the child.

Children are persistent and tenacious language users and pursue sense and meaning with vigour. Children are not frail in this respect. However when their efforts to create and respond to meaning are discriminated against, their youth and social inexperience become critical factors. There is little evidence to suggest that their vulnerability is regarded by the court as requiring any adjustments through language.

Three incidents occurred recently which, in the context of this study, can only be regarded as more beginnings.

The case of the eight children who were repeatedly abused whilst in kindergarten and which came to light some two years ago has been delayed by the defence, once again, another six months.

The sixteen year old girl after twelve years of constant sexual abuse by her father disclosed in order to protect her four year old sister. Coherent and lengthy statements were painstakingly collected from the developmentally delayed older girl. At the committal hearing the case was not found wanting but was not set for trial on the grounds that the primary witness would not, in court, convince a jury of the allegations.

The five year old boy was asked a series of questions by the magistrate to ascertain his ability to distinguish between truth and lies. The boy, after being threatened by his parents, after waiting two hours in the summer heat and after having recorded his story several times, satisfied the magistrate of his ability. From the floor of the courtroom he was asked all the same questions again. The child, baffled and tired, gave up.

Victimisation, immaturity and vulnerability are met with time lapses, disbelief, and intimidation. The last thing child victims need is strange language.

13 NOW READ ON

Biblographies provide clues and connections not always obvious in the text. Extra remarks and recommendations hopefully provide the impetus to read on.

BOOKS

BAILEY, F.L., ROTHBLATT, H.B. (1980) Successful Techniques for Criminal Trials. The Lawyers Co-operative Publishing Co: San Fransisco.

This is a 'how-to-do-it' handbook for lawyers participating in criminal trials and contains detailed advice on "attacks on credibility of witnesses" (p 32), "controlling the witness's answers" (p 309) "how to discredit the expert witness" (p504) and "cross examining the very old and the very young" (p329). Amongst the many pieces of advice and directives lies the statement "A very young person is not a reliable source of information. The ability to organise and interpret experience is a gradually acquired ability. Before the age of twelve, children perceive and grasp events with varying degrees of distortion. They embellish the real with the wishful." It is a book about capitalising on whatever might be available be it misinformation, frailty or susceptibility.

ADELMAN, C. (1981) Uttering muttering collecting, using and reporting talk for social and educational research. London: Grant McIntyre Ltd.

"Uttering, Muttering" helps those interested in social research turn information which is so often easily accessible, into data.

BERNSTEIN, B. (1971) Class, codes and control. Volume 1: Theoretical studies towards a sociology of language. London: Routledge and Kegan Paul.

"Class, Codes and Control" is one collection of papers amongst many, and is a classic of modern views on the sociology of language.

BOLINGER, D. (1980) Language - the loaded weapon: the use and abuse of language today. New York: Longman Inc.

"Language - the loaded weapon" is an informed, accessible and even entertaining book about language. As an introduction to, and an elaboration of, the use and power of language, it is good reading.

CECI, S.J. TOGLIA, M.P. and ROSE, D.F. (ed.) (1987). Children's eyewitness memory. New York: Springer-Verlag.

This book is the most recent publication dealing with the overall issue of the reliability of the child witness in court. It is a detailed set of reports and explorations which are supported by research findings. It's first chapter deals specifically with the child witness in cases of physical and sexual abuse. The bibliographies attached to each contribution in this book provide excellent pointers for anyone interested in following up specific issues related to the abilities of child witnesses to tell the truth.

CLAY, M. et al (1976) Record of oral language. Wellington: New Zealand Education Institute.

"The Record of Oral Language" contains basic concepts about how we learn language and how control is established over that language. It suggests ways of assessing a child's ability to handle selected grammatical structures.

CLEVERLEY, J. PHILLIPS, D. (1987) Visions of childhood - influential models from Locke to Spock. Sydney: Allen and Unwin Pty. Ltd.

The appraisals of childhood in this book provide a range of contexts in which to define and interpret what happens in children.

COATES, J. (1986) Women, men and language. London: Longman.

If you are interested in the details of how language works in determining our roles, actions and responses, this book provides them. It also allows you to access the world using your sociolinguistic eyes and ears.

HALLIDAY, M.A.K. (1973) Explorations in the functions of language. New York: Elsevier.

"A functional approach to language means, first of all, investigating how language is used; trying to find out what are the purposes that language serves for us, and how we are able to achieve these purposes through speaking and listening, reading and writing." (p vii).

HALLIDAY, M.A.K. (1978) Language as social semiotic-the social interpretation of language and meaning. London: Edward Arnold.

This is not recommended reading for the uninitiated but it does provide some of the background concepts and ideas which permeate this study. "We shall not come to understand the nature of language if we pursue only the kinds of questions about language that are formulated by linguists". (p 3).

LABOV, W. (1972) Sociolinguistic patterns. Oxford: Blackwell.

"There is a growing realisation that the basis of intersubjective knowledge in linguistics must be found in speech-language as it is used in everyday life by members of the social order, that vehicle of communication in which they argue with their wives, joke with their friends, and deceive their enemies." (p xix).

McFARLANE, K. WATERMAN, J. CONERLEY, S. DAMON, L. DURFEE, M. LONG, S. (1986) Sexual Abuse of young children. New York: Guilford Press.

This is possibly the most significant publication on the subject in recent times. It addresses in large part the issues of gathering evidence, assessing incidence, and the social and legal responses to sexual abuse.

MUIR, J. in SANDERS, M. (1980) A time to care -Tasmania's endangered wilderness, Tasmania: Chris Bell.

"When we try to pick out anything by itself, we find it hitched to everything else in the universe".

O'BARR, W.M. (1982) Language, power and strategy in the courtroom. New York: Academic Press Inc.

"This book reports the work of the Law and Language Project at Duke University" (p xi) It sets out to investigate the relationship between the operation of the law and the role which language plays in this operation. The propositions which underlie the study are: 1) Linguistic variation in any setting is not random, but socially patterned; and 2) Sets of rules for successful strategies and tactics exist for competitive arenas of all sorts, including trial courtrooms". (p xi) It is recommended reading for anyone interested in coming to terms with the assumptions which linguistically underlie the language of the courtroom.

SLESS, D. (1986) In search of semiotics. New Jersey: Barnes and Noble Books.

The first sentences of the Preface say it all. "Semiotics is far too important an enterprise to be left to the semioticians. This book is not written for them. I have written this book for everyone with an interest in our wondrous capacity to create meaning and understanding".

SPRADLEY, J.P. (1980) Participant observation. New York: Holt, Rinehart and Winston.

"Sometimes cultural knowledge is communicated by language in such a direct manner that we can make inferences with great ease." (p 10)

"Ethnography is an exciting enterprise...it is a tool of great promise...it offers educators a way of seeing schools through the eyes of students...those in the criminal justice system a chance to view the world through the eyes of those who are helped and victimised by that system..." (p vii).

WOODEN, N.K. (1976) Weeping in the playtime of others: America's incarcerated children'. New York: McGraw Hill.

This is a book about society's response to victimised children, and should be of interest specifically to people working in and around remand centres, youth training centres, refuges and homes.

REPORTS AND PAPERS

BONNEY, R. (January 1987) 'Crimes (Sexual Assault) Amendment Act, 1981 - Monitoring and Evaluation -Interim Report number 3, Court procedures . Sydney: N.S.W. Bureau of Crime Statistics and Research.

BYRNE, P. (1987) 'Child sexual assault-law reform past and future'. A paper presented at a seminar conducted by the Institute of Criminology, University of Sydney.

The paper incorporates history, legislation, expectation and critique. It is essential, basic, informative reading. It addresses issues associated with child credibility, viz oath, anatomical dolls and time lapses.

CASHMORE, J. and HORSKY, M. (January 1987) 'Child sexual assault: the court response'. Sydney: NSW Bureau of Crime Statistics and Research, Attorney General's Department.

"The aim of this study is to investigate the way in which cases of child sexual assault are dealt with in the criminal justice system of NSW. The following three questions will serve as the focus of the analysis:

1) What proportion of cases entering the criminal justice system proceed through the various stages of committal and trial to conviction and sentencing?

2) What factors affect the passage of cases through the various stages of the system? Particular attention will be paid to the relationships between the offender and the victim.

3) What major features of the way cases are dealt with, affect the major participants the defendant and the complainant? (p 7).

This report provides a huge array of impeccably collected statistical data which brings together information hitherto scattered throughout the legal system. On the basis of this information a discussion of the following issues emerges:

a) The likelihood of prosecution (p 72).

b) The nature of the plea (p 73).

c) The factors influencing the decision to proceed following committal (p 74).

d) Problems associated with jury instructions and uncorroborated evidence given by child victim witnesses (p 76).

e) The types of sentences imposed (p 78).

The report culminated in a set of possible reforms to the judical procedures for dealing with child sexual assault. These included expedited hearings for these cases, joint interviewing procedures to minimise the number of times the child is required to repeat the details of the alleged assault, the establishment of a special prosecuting unit for these cases, measures to reduce the intimidation of court surroundings and personnel and pre-trail diversion programmes for offenders who plead guilty (p 82-85).

CHILD SEXUAL ABUSE AND THE LAW, (May 1982) The sub committee to examine the Social, Medical and Legal Consequences of the Law and its practice in relation to the sexual abuse of Children under 18 years of age. Perth: Department of Community Welfare.

This report deals with the harmful effects of court appearances of child victim witnesses. It assesses the comments of children and workers in the field about the treatment of children in court. It questions the need to repeat stories of abuse and the nature of the adversarial system where the setting, the delays in the legal process and the position of the child within the system all conspire to confirm the status of the child as a victim rather than as a complainant.

CHILD SEXUAL ASSAULT TASK FORCE. (March 1985) Report to the Hon. Neville Wran QC.MP Premier of New South Wales. Sydney: New South Wales Government.

This report brings together a huge array of opinions and concerns related to all the dimensions of child sexual assault. It is organised around a set of sixty five recommendations made by this Task Force. Each recommendation is supported by background information, community comment and legislative and legal realities. It is a magnificent piece of work: definite, exploraratory and sensitive. It should be prescribed and mandatory reading for anyone interested in children or anyone who has contact with them in any way.

HABGOOD, A. (July, 1986) 'Child sexual abuse-a discussion paper'. Sydney: Youth and Community Services.

This paper provides a detailed review of the literature relating to all the dimensions of child abuse. It has an excellent bibliography. Of particular interest is the section called "The Validity of the Child's Statement" which draws together the often conflicting notions associated with the issue of child credibility.

NSW GOVERNMENT VIOLENCE AGAINST WOMEN AND CHILDREN LAW REFORM TASK FORCE. (July 1987) Consultation Paper. Sydney: Government's Women's Co-ordination Unit.

This Consultation Paper is intended to "...focus community and government attention on the extent of violence directed in our society at women and childen, often in the privacy of their homes and in personal relationships". (p 1). The first section of this paper deals with the child victims of sexual assault. It provides an excellent legislative context for the changes in the law which took place in March 1986, and further outlines

some of the problems with which child witnesses are still confronted. Delays in court proceedings, the number of times children are required to retell their stories and the trauma associated with the abuse and subsequent court appearances are discussed. Possible areas of change are also explored such as the use of closed circuit television in court, transfer of proceedings to other more suitable locations and the use of videotaped statements made by the child. These options are argued cogently and supported by information from other legal systems which are attempting to come to terms with the dimensions of the problem.

SCHETKY, D.H. and BENEDEK, E.P. (October 1986). 'The role of the child psychiatrist as expert witness for the defence'. Paper presented at the American Academy of Child and Adolescent Psychiatry Annual Meeting.

This paper deals with the isue of false allegations of child sexual assault and the role which the expert witness plays in the preparation of the defence case. It does not demote the status of children to hysterical fabricators of sexual abuse but rather points in the direction of a better level of information for all those involved in the area. "There was a presumption of guilt. On further thought and discussion we realised that some defendants might indeed be innocent and perhaps we had a role to play in helping the attorney evaluate the validity of allegations and plan defence strategies, as well as in educating judges and juries and the legal profession as to how one goes about doing these complicated evaluations and the dynamics of true vs. false allegations of child sexual abuse." (p i)

SIXTH INTERNATIONAL CONGRESS ON CHILD ABUSE AND NEGLECT, (1986) 'The abused child: prevention and protection'.

A microfiche collection of abstracts of the papers presented at the congress are available through the University of New South Wales Library.

U.N. 'DRAFT CONVENTION OF THE RIGHTS OF THE CHILD'. (April 1987,) Switzerland: International Catholic Child Bureau.

As the title implies this paper sets out the rights of the child as specified by the United Nations.

ARTICLES

BENEDEK, E.P. and SCHETKY, D.H. (1986) 'The child as a witness'. Hospital and Community Psychiatry. 37, 2,p. 1225-1229.

Issues raised in this excellent article include:

1. Child's verbal ability to describe events later on more articulately than when they occurred.

2. Danger of leading questions as these mislead the child and put extra stress on an already overtaxed memory.

3. Children are better at noticing "irrelevant" detail than adults.

4. Despite Piagetian evidence it has been shown that children from the age of 6 to 8 years of age could separate fact from fantasy.

5. Young children are less likely to lie about events because they perceive rules as moral absolutes.

6. Children can be forced to change their stories if they are the subject of undue emotional pressure from figures of authority.

7. Psychological issues of the child as a witness.

BERLINER, L. and BARBIERI, M.K. (1984). 'The testimony of the child victim of sexual assault'. Journal of Social Issues, 40, 2, p 125-137.

The successful prosecution of sexual assault cases rests largely on the testimony of the child "yet there are both social and legal barriers to the acceptance of the child's statements as courtroom evidence." (p 125)

This article deals with four main reasons why cases of child sexual assault are so difficult to prosecute.

The general truthfulness of children is upheld and studies quoted. Burden of proof problems for the prosecution in other communities which handle cases of sexual assault are discussed.

Other topics covered include alternatives to a court, preparing a child for court, the court appearance, bolstering the child's evidence, and when children should not testify.

CONTE, J.R. and BERLINER, L. (1981) 'Prosection of the offender in cases of sexual assault against children'. Victimology, 6, 1-4, p 102-109.

This article deals with the "..procedures instituted within a county prosecuting attorney's office for handling cases involving a child victim of sexual assault." (p 102) It covers the topics of interviewing, pre-assignment of cases, and prosecution of the adult offender. It is an excellent case study of how things can be done well with minimum trauma to the child.

CONTE, J.R. (1984) 'The Justice System and sexual abuse of children'. Social Service Review, Univ. Chicago, 37 , p 556-568.

This article takes a critical look at common beliefs about sexual abuse of children, and discusses the initial treatment needs of these cases and how the justice system can be helpful in meeting these needs.

Amongst many of the issues addressed the article notes the problem of "...the attitude of disbelief on the part of the justice system personnel that is communicated to the victim, thereby invalidating her experience ....". (p 564)

COX, E. (August 1986) 'Child abuse-epidemic or folk panic?' Paper presented for the Sixth Annual Congress on Child Abuse.

This article deals with the difference between the stress abuser and the pathological abuser. It also advocates a different concept of child rearing where the state would assume responsibility to provide services that ensure that all children have access to a range of services which provide the supports which they need. (p 10)

"More importantly ... is an encouragement to increase the responsibility communities take for children, so that children are seen as an appropriate recipient group for community services. This would require breaking down the privatisation of families idealogically, and a shift from detecting and punishing poor parenting, to an assumption that all parents need support." (p 10)

DANET, B. (1980) 'Language in the legal process'. Law Society Review, 14, 3.

Amongst the many features identified as making Legal English (LE) difficult to comprehend are nominalisation, syntactic complexity, sentence length and use of the negative. As a basis for her interest in language she claims to be concerned with "the nature, functions and consequences of language used in the negotiation of social order" (p 449). Her lively sociolinguistic and psycholinguistic approach to the study of language and the people who use it helps make the workings of LE less of a secret. "Comparative studies of the adversarial and inquisitorial processes are badly needed. How is the ideology of the inquisitorial mode realised in practice. Might linguistic research lead to proposals for humanising the adversary model?" (p549).

FALLER, K.C. (1984) 'Is the child victim of abuse telling the truth?' Child Abuse and Neglect, 8, pages 473-481.

This article deals with who has most to lose from lying in cases of alleged sexual abuse. Page 474 maintains quite clearly that the child has the most to lose by lying "For his part the perpetrator has everything to lose if the child's story is believed and thus in most cases will deny he has sexually abused the child when indeed he has."

GOODMAN, G.S. and MICHELLI, J.A. (1981). 'Would you believe a child witness?' Psychology Today, 4, p 82-95.

Children are more than adequate as witnesses if they are allowed to be. "But courtroom procedures are not generally kind to the child witness". (p 83) This article articulates the strengths of children as witnesses and dispels the myth they they are prone to fantasy and fabrication. It is a sensitive account of how children deal with the recounting of the details of their sexual abuse, and how the law responds to these recountings.

GAME, A. (May 1986) 'Child sexual assault the liberal states response'. Legal Services Bulletin, p 167-170.

This is an article which assesses the NSW Task Force report March 1985 in terms of feminist issues. It finds the Task Force lacking.

GATH, A. (September 1986) 'Recognition and treatment of emotional abuse'. Update, p 15-23.

This article deals with different cases of emotional abuse. It outlines case studies of the failure to thrive syndrome. A definition of emotional abuse is given on page 20.

GRUNSEIT, F. and FORD, A. (1986) 'Child sexual abuse'. Contemporay Paediatric and Adolescent Issues, Modern Medicine of Australia, p 28-32.

This article deals a little with the history of child sexual assault and and legacy of the untruthful child which still permeates our thinking about child abuse.

It also outlines the characteristics of the abused child (p 29) "It is high time that the myth of the lying child is laid to rest" (p 31). Forensic difficulties and courtroom inconsistencies are also discussed in this article on pages 31 and 32.

HARRISON, N. (1987, August) 'Child sexual assault-social and legislative change'. Law Society Journal. 26-29.

This article presents a detailed anlysis of the changes in the law relating to child sexual assault.

HOLDOROW, B. (24/28 September 1980) 'The role of the advocate for the child'. Interdisciplinary Conference on Child Neglect and Abuse Conference Paper, p 295-299.

An essay about the experience of a child advocate over a period of years.

JOHNSON, K.M., FOLEY, A.M. (1984) 'Differentiating facts from fantasy: the reliability of children's memory'. Journal of Social Issues 20, 2, p 33-51.

"This paper examines a set of common assumptions about children's memory. Children compared to adults are thought to notice less, omit more, forget faster, be more susceptible to suggestion, and especially to intermingle imagination and perception in remembering .....The results suggest that children may have difficulty with some but not all, reality monitoring situations." (p 33)

COUNCIL OF SOCIAL SERVICES OF NSW, 'Kids, Courts and Cops'. (1985) NCOSS Issues Paper, number 4.

This paper outlines some of the problems children are confronted by in the legal system. The problems of duty solicitors representing children is discussed in detail.

LINDBERG, F. and DISTAD, L. (1985) 'Survival responses to incest: adolescents in crisis'. Child Abuse and Neglect, 9 , p 521, 526.

This article deals with clinically based reactions to child abuse by adolescents. It outlines typical kinds of self destructive behaviour that adolescents who have been abused indulge in and gives specific details on cases. The main thrust of the article concerns the need by every child to build defensive walls about themselves to shield themselves against emotional and physical abuse.

LINN, M. C. et al (1987) 'Gender differences in national assessment of educational progress science items; what does 'I don't know' really mean?' Journal of Research in Science Teaching. 24, 3, p 267-278.

The most significant feature of this article concerns the "I don't know" response which is frequently heard in court, and which cross examiners use to downgrade the credibility of the child witness. This piece of research indicates that "...learners have different thresholds for uncertainty and that frequent users of "I don't know" express uncertainty even when they are almost sure while others express uncertainty only when they have no idea at all. Related to the uncertainty argument, some learners may tolerate great levels of risk and guess when the likelihood of a correct response is 50%. Others may choose a response only if the likelihood is 90%" (p 267-268) The gender differences associated with this response are also significant. Females, the most frequently assaulted group of children, are more unwilling to take risks when answering questions than males are. Therefore the incidence of "I don't know" responses is higher for this group. "An unwillingness to take risks may also lead females to avoid giving a definite answer. Not giving an answer has the advantage that it avoids being either 'right' or 'wrong'....Thus, saying "I don't know" provides an alternative to two unpleasant choices." (p 276). There is obviously a lot more to this response than the actual words which are being spoken in reply to a question.

LOFTUS, E.F. and DAVIES, G.M. (1984) 'Distortions in the memory of children'. Journal of Social Issues, 40, 2, p 51-67.

This article deals with an analysis of research data on the reliability of children's memories and their relative susceptabilities to leading questions. The consensus is: "No clear developmental trend emerges, however, from recent studies on the effects of leading questions. This may surprise those who believe that suggestibility is a general characteristic of childhood." (p 62).

"If an event is understandable and interesting to both children and adults, and if their memory for it is still equally strong, age difference on suggestibility may not be found. But if the event is not encoded well to begin with, or if a delay weakens the child's memory relative to an adult's, then age differences may emerge'. (p 63)

MARIN, B.V. et al (1979) 'The potential of children as eyewitnesses'. Law and Human Behaviour, 3, 4,.

This article outlines a detailed set of age related experimental tasks which were designed to test the validity of children as eyewitnesses. These studies have been cited in other articles related to children as eyewitnesses and the memory abilities of children.

MELTON, G.B. (1982) 'Psycholegal issues in child victims' interaction with the legal system'. Victimology. 5, 2-4, p 274-284.

"The presumed vulnerability of children raises particular issues about legal procedures which may exacerbate their victimisation" (p 274). This article explores the possibilities for reform of the legal system based on the premise that court appearances further harm the child victim of sexual abuse. It investigates the situation in Israel where a Youth Examiner is appointed for any child under 14 years of age. "In any sex offence involving a child under 14, no interrogation or testimony by the child may take place without permission of the youth examiner". (p 276) The Scandinavian experience is also discussed where trained police officers record the interview with the children with the idea in mind that the children are not then required to repeat their stories to a lot of people on a lot of other occassions. The fundamental right of the accused to confront the accuser is also discussed as is the role of cross examination within this confrontation. "Arguably it is the need to cross examine which is most basic to the defendant's right of confrontation. Only then can he challenge testimony which is misleading or damaging" (p 278).

McFARLANE, K. (September 1986) 'Child sexual assault-the clinical interview'. Summary of a video tape prepared by Bernard Boerma R.C.P.O. for South West Metropolitan Regional Child Protection Workers.

This study guide accompanies a video tape which deals with the different ways that children, who are the alleged victims of sexual assault, may be interviewed to establish the truth. It is a child centered approach to the issue of abuse and the booklet outlines the main problems, fears and worries which confront children who have been abused and how a skilled interviewer can wade through these problems for the ultimate benefit of the child. This video-tape and accompanying booklet provide insights into the ways in which children think about sexual abuse and how adults can best help children come to terms with the nature of their assault.

ORDWAY, D.P. (Jan/Feb 1983) Reforming judicial procedures for handling parent child incest-A special report.' Child Welfare, LXII, 1, p 69-75.

This article has surveyed a great deal of literature available on the topic of child abuse. Its central focus is the reform of the judical procedures for dealing with child abuse to minimise the trauma for the child. Ordway firmly believes the way in which cases are handled, from disclosure to settlement, are punishing the child and must be changed. He has a number of suggestions for change.

ORDWAY, D.P. (1981) 'Parent-child incest, proof of trial without testimony in court by the victim'. University of Michigan Journal of Law Reform. 15, p 131-152.

This is one of the most informed articles on the subject of alternatives to open court cross examination of child victim witnesses. It contains a proposal for reform based on the employment of an expert who ".....must have dual qualifications: first he or she must be qualified to deal with victim's of child sexual abuse; and second, he or she must be familiar enough with legal standards and practices to assist the trier of fact in assessing the victims credibility". The intricacies of collecting, presenting and validating evidence are fully addressed as are the rights of the accused to confrontation and due process.

OWEN, D.S., WELCH, M., (September 1986) 'Interview training of child sexual abuse victims'. Law and Order. p 84-87.

"As the volume of cases involving sexual crimes against children increases it becomes more difficult for children to function in the arena of criminal justice. A framework for eliciting and analysing information from the child interview is necessary". (p 84) The article contains clear and detailed suggestions on how to conduct a police interview as well as how to respond to some of the child's needs and reactions.

ROBERTS, R. (Spring 1984) 'Child abuse, a socio environmental perspective'. Australian Child and Family Welfare. 9, 3, p 10-20.

This paper is highly exploratory of the social theories relating to child abuse.

ROWE, M.B. (1974) 'Reflections on wait time: some methodological questions.' Journal of Research in Science Teaching. 2, 3, p 263-279.

A discussion of the methodologies involved in collecting the data on which the author's hypotheses about wait time are based. "In the wait time research we proceed at times with great abandon. We take Ploya's advice seriously, if we cannot solve one problem we try solving a simpler one that is analagous to it. A great discovery solves a great problem but, there is a grain of discovery in the solution of any problem". (p 278)

ROWE, M.B. (1974) 'Relation of wait time rewards to the development of language, logic and fate control: part 2, rewards'. Journal of Research in Science Teaching. 2,4, p 291-308.

This article is the second in a series dealing with the effect which increasing the time between a question and an answer has on the quantity and quality of answers given by children. It is fundamentally a study of "...reward patterns in the context of inquiry." (p 291)

ROWE, M.B. (1978) 'Wait, wait, wait ....'. School, Science and Mathematics. 78, 3, p 207-216.

The most significant thesis to emerge from this article is that if the time between the question and the answer is increased by three seconds only "We found that the whole quality of discourse began to change...and that there was also a noticeable change in the children's verbal behaviour." (p 209) In a classroom context this meant that children began to "....evaluate and to value their thoughts and the thoughts of others." (p 216)

ROWE, M.B. (January/ February 1986) 'Wait time: slowing down may be a way of speeding up'. Journal of Teacher Education, xxxvii, 1, p 43-50.

This article analyses the effects on children of increasing the wait time between questions and answers. These pauses are generally very short, perhaps only one second, in which "..... an adequate exchange of ideas and the nurturing of new ideas cannot take place". (p 48) All the articles by Mary Budd Rowe reinforce the idea that questions must have a purpose and that children must be given adequate time in which to organise their thoughts before being required to answer. In court this time is rarely available, and silence is interpreted as an opportunity for the child to manipulate their account of their abuse. Silence is a measure of the child's lack of credibility. The concept of wait time must be recognised as legitimate in the cross examination of the child victim witness.

WOMEN LAWYERS ASSOCIATION. (1985). Sexual Offence Prosecutions. Law Association. Law Society Journal, p 856-858.

This article deals basically with the rights and problems of women involved as victims in cases of sexual assault. However it does contain certain principles which are valid for all witnesses in cases and in particular for child witnesses. It contains a set of recommended legislative changes. One of these changes deals with advice which a judge can give to the jury prior to their reaching a verdict. It points out the difference between total doubt and reasonable doubt. (p 857).

Perhaps the most interesting recommendation contained in this article refers to the appointment of an advocate for the victim. It reads "Separate legal representation for the victim in sexual offence trials has been suggested ... The role of the prosecutor is to present the crown case and the victim is the chief witness .... It would be particularly valuable for the victim in the stages of preparation before committal or trial. This would be especially so in the case of young victims who may be intimidated by courtroom procedures". (p 858)

SGROI, S.M., PORTER, F.S. and BLICK, L.C. 'Validation of child sexual abuse'. Clinical Intervention in Child Sexual Abuse, p 39-79.

This article deals with the difficult problem of validation in alleged cases of child sexual assault. It enumerates the behavioural indicators of child sexual abuse and cites examples of how these indicators are best recognised by those working with children. It contains an excellent section on investigative interviewing and how this can be used to establish the validity or otherwise of children's complaints. A transcript from an interview provides valuable insights on how sensitive and well trained interviewers can obtain information over a number of sessions and in a number of different formats. A discussion of the physical indicators of assault completes this analysis.

STAFFORD, C. F. (Autumn 1962) 'The child as a witness'. Washington Law Review, 37, 3, p 303-324.

This excellently supported article presents the issue of the child as witness from the legal perspective. The author strongly defends the proposition that children generally have the ability to tell the story of their abuse in their own language and in their own way.

SUMMIT, R.C. (1983) 'The child sexual abuse accommodation syndrome'. Child Abuse and Neglect, 7, p 473-481.

This deals with the ways in which children accommodate psychologically and emotionally the incidence of sexual abuse The problems of talking about a sexualised relationship with an adult are discussed in detail and the types of behaviour used by the child to cope with these perceptions are outlined in detail.

SUMMIT, R. and KRYSO, J. (1978). 'Sexual abuse of children: a clinical spectrum'. American Journal of Orthopsychiatry, 48, 2, p 237-251.

As the title implies this article deals with the continuum of abuse from incidental sexual contact to perverse incest. It concludes with the following comment, "Sexual abuse is the most concealed, most distressing and most controversial form of child abuse. We believe it deserves the same quality of enlightenment and helping resources that have revolutionised the approach to other forms of abuse." (p 250)

TEDESCO, J.F. and SCHNELL, S.V. (1987) 'Children's reactions to sex abuse investigation and litigation'. Child Abuse and Neglect, 11, p 267-272.

Given the fact that court appearances are often remembered by children as being highly emotionally charged negative experiences, this study attempted to quantify "....the extent to which children are helped or further victimised by sexual abuse investigation and litigation procedures." (p 267).

It is important to note that children who were required to testify in court ".....more often viewed the process as harmful" (p 271) "This finding would suggest that a thorough study of courtroom procedures is in order." (p 271).

TUCKER, N. (October 1985) 'A Panic over child abuse'. New Society.

This article deals with the tough campaigning which has been evident in the US and argues that some of it is extreme and is contributing to an unhealthy regard on the part of the children of the rest of the world.

"It may sometimes be abused, but the establishment and maintenance of broad child-adult trust remains a cornerstone of any culture. It is reflected in literature, art and religion, as well as in the whole nature of the family relationship. Chipping away at it too radically at an impressionable age can also be dangerous especially in the already highly fraught area of sexuality-child, adult and in between," (p 3).

VANOSS, M. et al (1979) 'The potential of children as eyewitnesses: a comparison of children and adults on eye witness tasks'. Law and Human Behaviour. 3, 4, p 295-306.

This article is the result of a piece of research conducted by the authors. "Subjects aged five to twenty two years viewed a confederate interacting with the experimenter and were asked to tell what happened, to answer objective questions, including a leading question, and to identify the confederate from 6 photos." (p 295) The conclusions which they drew from this research indicate that "...children were as capable as adults of answering direct questions about the incident and identifying the person they had seen from the photographs ...Children were not as capable as adults of providing a narrative description of what they had seen" (p 304). Children are reliable as long as the context of the questioning and the questions which they are asked are within their range of experience and their linguistic capacities.

VEILLARD-CYBULSKA, H. (Sept.-Dec. 1976) 'Interviewers, interviewees and procedures-the human and material aspects of questioning of children and adolescents'. International Child Welfare Review, 30-31, p 69-83.

This report is based on replies to questionnaires and documents from 56 countries.

It deals with the results from these surveys.

a) The issue of child welfare versus appearance in court which children have found to be difficult and taxing experiences.

b) The child as a holder of individual rights.

c) From the survey it appeared clear that almost anyone can conduct an interview with a child victim. "It follows that, in fact, everyone can interrogate children and make them talk. There are nonetheless few people who know how to speak to children, and even less who know how to speak with children" (p 71).

d) The more sophisticated the system the more people the child has to contend with.

e) An outline of the differences between the English common law system and the Continental or French legal system.

f) Cross examination procedures.

g) Physical setting of the courtroom.

h) Language and terminology.

YATES, A., BEUTLER, L.E and CRAGO, M. (1985) 'Drawings by child victims of incest'. Child Abuse and Neglect, 9 , p 183-189.

This article surveys the difference between art produced by the abused child versus the art of the unabused child and points out quite starkly what these differences are.

STRANGE LANGUAGE is about the secondary victimization of sexually abused children by the courts. It is compelling reading and is recommended for barristers, magistrates, judges and welfare workers committed to a concept of justice which recognises and accommodates the special needs of child victim witnesses. STRANGE LANGUAGE is a telling account of the use of language as a powerful and punitive instrument.

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